



Special points of interest:

- Canada's 'Self-Government' Policy Unmasked.
- Canada-Kahnawake Relations (CKR).
- Quebec's 'Aboriginal Affairs' Policy Unmasked.
- Quebec-Kahnawake Relations (QKR).

Inside this issue:

KTA Board Comments	1
Canada's Negotiations Policy	2
CKR Agreements	10
Quebec's Negotiations Policy	23
QKR Agreements	28
Contact Info	38
KTA Board Conclusion	38

CANADA-QUEBEC 'FINAL SOLUTION' POLICIES & MCK AGREEMENTS

As was prophesized by our ancestors, the 'two serpents' (Canada & U.S.) have grown so large they feel confident enough to develop policies, practices and laws to try and terminate North American Indigenous Nations.

In Canada, under **Jean Chrétien's** leadership as Prime Minister, in 1995, the federal government issued an "**Aboriginal Self-Government**" policy, which is designed to deny the Inherent Right of Self-Determination and Nationhood of First Nations.

The federal policy makes the negotiation rules clear:

"The inherent right of self-government does not include a right of sovereignty in the international law sense, and will not result in sovereign independent Aboriginal nation states."

The federal "self-government" policy sets out Canada's negotiation position with all First Nations, including the **Mohawk Council of Kahnawake (MCK)**. The federal policy also gives all provinces—including Quebec—a veto in any negotiations with First Nations on subject matters that affect provincial jurisdiction, or laws.

Another dangerous feature of the federal "self-government" policy, is that all of the real powers of Sovereignty and Nationhood necessary for sustaining an economy, trade and diplomatic relations with other Nations in the World, Canada intends to keep for itself, and are not on the table for negotiations with First Nations. There is no real power sharing contemplated in the federal self-government negotiation process, which we know locally as the **Canada-Kahnawake Relations (CKR) Agreements**. The only role the MCK would have under the CKR Agreements would be "delegated authority" under various federal (and provincial) subject areas. In effect, taking over the Indian Act system for managing Reserve lands, membership, elections. Any take over of program and services in subject areas such as policing, education, health, social services, etc. would have to be with the consent of the Quebec government, because the Federal "self-government" policy gives provinces a veto over negotiations with First Nations in areas of provincial jurisdiction under Canada's constitution.

[See conclusion on back page]



Federal Policy Guide

ABORIGINAL SELF- GOVERNMENT



The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government



CANADA'S NEGOTIATION POLICY ON "SELF-GOVERNMENT"

The long-term goals of Canada are the assimilation and termination of the First Nations. Since 1876, the main tool to accomplish this has been the federal Indian Act. The Indian Act system was forced on us by Ottawa in the late 1800's using the RCMP to arrest our traditional Chiefs and replace them with an "elected" Chief and Council, which today is the Mohawk Council of Kahnawake (MCK).

The federal Indian Act was written 128 years ago to give the Minister of Indian Affairs and his staff control over virtually all community matters. How we governed ourselves. Who was entitled to be a member of our community. How we used and possessed our lands and resources. Where we went to school and what we were taught. What businesses we could and couldn't establish and who we could do business with and where we could do business.

In a 21st Century World with increasing globalized communications and transportation, Canada knows that it is subject to increasing international scrutiny. Canada also knows that the Indian Act is an outdated, racist, colonial law, which is inconsistent with International Covenants on Human Rights and emerging international standards on the Rights of Indigenous Peoples and their treatment by Settler-States. But under Canadian laws, the federal government needs "Indian Consent" to get rid of the Indian Act.

So for the past 20 years, Canada has been offering a "self-government" policy and negotiation process to allow "Indian Bands" to go "beyond the Indian Act", into a "new relationship", which is to become a federally established municipality instead of an "Indian Band", within the meaning of the Indian Act.

The MCK began negotiations in the 1980's under the federal '**Community-Based Self-Government**' policy. This policy was established under a Conservative government of then **Prime Minister Brian Mulroney**. The **Sechelt Band** in British Columbia agreed to become a federally established municipality under this policy in 1986.

The federal government changed in 1993, when the Liberals, led by **Jean Chrétien**, won a majority government almost completely wiping out the Conservatives.

During the 1993 federal election campaign, the federal Liberals promised to recognize that the "**Inherent Right to Self-Government**" was already protected in section 35 of Canada's constitution. When the Liberals got into power this promise was broken.

In 1995, the federal Liberal government issued an "**Aboriginal Self-Government**" negotiations policy. The policy is a direct attack on the sovereignty and nationhood of First Nations, including Kahnawakeronon.

This is the federal policy that the MCK has been negotiating under since it came into affect in 1995, and the draft **Canada-Kahnawake Relations (CKR) Agreements** are the result of the negotiations. There is information on the CKR Agreements in another section of this newsletter.

In this section of the newsletter, we are providing you with an overview of the impacts of the **1995 Federal "Aboriginal Self-Government" policy** so that

'CANADA'S POLICY' CONTINUED FROM PAGE 2

you know what this may mean for the businesses in our community, and for all Kahnawakero:non.

The "Aboriginal" Melting Plot

The first thing to know about the federal "Aboriginal Self-Government" policy is that:

- The policy is not specifically for "First Nations" or "Indians". Throughout the text, the term "Aboriginal people" (not *peoples*) is used. This policy then, is to apply not only to the Indian Nations, but also to the Inuit, the Métis, and the various off-reserve Indian organizations that now exist, or may come into existence.
- By lumping the unique circumstances and particular legal and historical rights of Indian nations in with other "Aboriginal people", the policy succeeds in lowering the ceiling of what is on the table for negotiation, and the overall parameters of the nature and scope of the *inherent right*.

The term "**Aboriginal Peoples**" was first introduced into Canada's political-legal language during the constitutional negotiations in the early 1980's and became the term used in section 35 of Canada's constitution. It is intended by the Crown governments to refer to "Indians, Inuit and Métis".

Paul Martin's Liberal government is using the term "**Aboriginal-Canadians**" to emphasize Canadian citizenship in their "Aboriginal" policies, and his new Minister of Indian Affairs, Andy Scott, is also responsible for Inuit and Métis peoples. So Andy Scott is essentially the Minister of "Aboriginal Affairs", except Paul Martin doesn't call him that.

Pre-Conditions to Negotiations

Whatever ends up obtaining recognition as an *inherent right*, there are pre-conditions to negotiations which the federal government has laid out in the "Self-Government" policy. These are that:

- First Nations must operate "***within the framework of the Constitution.... in harmony with jurisdictions that are exercised by other governments***". This will require "***a harmonious relationship of laws***".
- The *inherent right* does not, in Canada's view, include "***the right of sovereignty in the international law sense***".

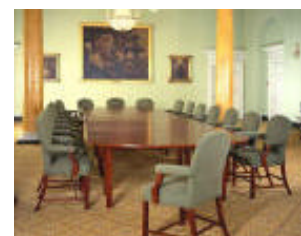
Self government agreements **and treaties** must contain a provision allowing for the application of the Charter of Rights & Freedoms to aboriginal governments.

"As a general rule.... agreements will not deviate from the basic principle that federal and provincial laws of an overriding national or regional importance will take priority over Aboriginal laws."

Federal and provincial laws cannot be automatically displaced by the introduction of a First Nation law - federal and/or provincial laws may continue or coexist, depending on the outcome of negotiations.



"there are preconditions to negotiations which the federal government has laid out in the "Self-Government" policy."





Prime Minister Paul Martin is the Leader of the Liberal Party of Canada and is Chair of the federal Cabinet. He decides what Canada will and won't negotiate with First Nations.

*"they say
"inherent", but
what Canada
means is that
"inherent rights"
are totally
conditional, to
reaching
agreements with
the federal and
provincial
governments."*



Premier Jean Charest, Leader of the Quebec Liberal Party & Chair of Quebec's Cabinet Committee.

'CANADA'S POLICY' CONTINUED FROM PAGE 3

What's On the Table

Only some self government rights will be considered "*inherent*". These fall into two main categories:

(i) "matters that are internal, and integral to their own cultures, identities, traditions, languages, and institutions." [emphasis added]

(ii) "matters relative to the special relationship to the land." This is code for "reserve lands", probably with the option of exercising some kinds of authority on some Crown lands, where provincial consent is obtained.

These are the rights that Canada is ready to accept as "*inherent rights*" already protected by s. 35, although their actual definition and meaning, and specific application to a particular Indian Nation, will—according to Canada's policy--still require negotiation with Canada, and ultimately Canada's consent.

In this sense, "*inherent rights*" - their definition and their implementation - are dependent upon Canada (and in some cases provincial) agreement. This is certainly a case where Canada has taken the terminology and made it mean what it was never intended to mean, in other words "double speak": they say "*inherent*", but what Canada means is that "*inherent rights*" are totally *conditional*, to reaching agreements with the federal and provincial governments. The implications of this word-game are significant, and shows how deception is still a weapon of Canada.

This "self-government" policy allows Indian Act Chiefs and Councils to tell their people they are negotiating with the external governments for federal (and provincial) recognition of "*inherent rights*", while the opposite is true.

There are two basic categories of powers that Canada has identified that set the limits of "self-government" negotiations:

1. Existing "Inherent" Rights:

As already pointed out, in Canada's view existing inherent rights are those **matters which are internal and integral to aboriginal culture and identity**, as well as, those which relate to the management of reserve lands. Consistent with this approach, the items which can be negotiated under this heading are those that relate to internal governance, administration, and reserve lands.

More specifically, this could include "***all, some or parts of the following***":

- "***governing structures***" (*constitutions, elections, accountability, etc.*)
- ***Membership, marriage, adoption, child welfare, social services.***
- ***Education, "aboriginal languages, culture and religion", health.***
- ***"Administration/enforcement of Aboriginal laws; aboriginal courts or tribunals of the type normally created by local governments for contravention of their laws"*** [emphasis added];
- ***policing.***
- ***"Transfer and management of monies and group assets"***.
- ***Licensing, regulation & operation of businesses "located on Aboriginal lands"*** (i.e., on reserve).

'CANADA'S POLICY' CONTINUED FROM PAGE 4

- "Management of local and community public works and infrastructure", housing.
- On reserve lands management: zoning, service fees, land tenure and access; property management (succession and estates); "expropriation of Aboriginal lands [i.e., reserve lands] for local group purposes"; natural resource management & agriculture.
- On reserve harvesting: hunting, fishing and trapping. (probably off reserve too, subject to agreement with provinces).

Some of these items (i.e., natural resource management, agriculture, harvesting) are of limited use unless they are accompanied by an increased land base. Significantly, the federal "Self-Government" policy does not deal with the question of additional lands for First Nations at all. It does, however, state that many of these headings of power are "**only feasible with a land base**". This is directed at those "Aboriginal people" (Métis and *off reserve/non-status*) who do not reside on established reserve lands.

2. Federal Delegated Powers:

There are other subject areas which, in Canada's view, "may go beyond matters that are integral to Aboriginal culture", but where Canada is willing to negotiate agreements on a tripartite basis "to enable Aboriginal governments to exercise some measure of jurisdiction or authority". [emphasis added]

However, this offer to negotiate these subject matters requires an admission of overriding federal authority.

In the subject areas that involve federal jurisdiction primary law-making authority, according to the "Self-Government" policy, would always remain with the federal government. The exercise of Aboriginal jurisdiction or authority in these areas could therefore not be inconsistent with federal laws.

The subject areas under this category include:

- **Taxation powers:** The power to tax is not considered by Canada to be an "*inherent right*" in character, even though it is clear that the redistribution of wealth and the stewardship of resources for collective benefit have always been a part of indigenous societies. This has major implications when considered along with other aspects of the federal "self-government" policy that call on "Aboriginal" governments to raise their own revenues, or which allow that the regulation of commerce on reserve is an "*inherent right*".

The position taken by Canada assumes that First Nation governments do not possess tax immunity or the authority to use taxation as a means of achieving social and economic policy objectives, even though these powers are clearly accepted as essential components of existing provincial and federal headings of power. In this sense, for Indian nations, the "*inherent right*" means less than what other governments take for granted.

- **Labour law.**
- **Divorce law:** Although Canada seems prepared to concede that marriage comes under the *inherent right*, divorce does not.



Members of Canada's Royal Canadian Mounted Police (RCMP). A Federal Police Agency.

"this offer to negotiate these subject matters requires an admission of overriding federal authority."



Members of Canada's Elite Military Unit JTF 2.



Parliament Hill in Ottawa is where the CKIRA would have to pass before it becomes law.

“There are two categories of subject matters which Canada is not prepared to negotiate in the context of the “inherent right”

- 1) powers related to Canadian sovereignty, and*
- 2) “other national interest powers”.*”



Federal House of Commons has to vote on CKIRA before it would become law. Kahnawake would only be ‘consulted’ in the process.

‘CANADA’S POLICY’ CONTINUED FROM PAGE 5

- ***The administration of justice; penitentiaries and parole.***
- ***Aspects of environmental protection and assessment and pollution control:*** This is significant, since reserve lands, being federal, are subject to federal Environmental Assessment Guidelines and the Canadian Environmental Protection Act. Canada’s willingness to recognize land management as an “*inherent right*” will not, therefore, necessarily remove federal laws or authority from reserve lands.
- ***Fisheries co-management:*** This would seem to be a major concern, given ongoing conflicts in British Columbia and the Atlantic.
- ***Gaming:*** As above, this promises to present difficulties.
- ***Emergency preparedness.***

What is Not on the Table

There are two categories of subject matters which Canada is not prepared to negotiate in the context of the “*inherent right*” **1) powers related to Canadian sovereignty**, and **2) “other national interest powers”**.

In these areas, according to the “Self Government” policy, exclusive jurisdiction must remain with the federal government. Moreover, there are no compelling reasons for Aboriginal government to exercise power in these areas, which “***cannot be characterized as either integral to Aboriginal cultures, or internal to Aboriginal groups***” [emphasis added]

For some of the headings listed below, however, this reasoning is quite arbitrary and unacceptable, particularly given the fact that upon contact with the Europeans, Indian nations’ treaty making powers and control over the conduct of “foreign affairs” were clearly recognized.

(i) Powers Related to Canadian Sovereignty, Defense & External Relations:

- ***international/diplomatic relations & foreign policy***
- ***national defense & security***
- ***security of national borders***
- ***international treaty-making***
- ***immigration, naturalization and aliens***
- ***international trade, including tariffs and import/export controls***

The fact that many Indian nations have traditionally used and occupied lands and resources on both sides of the USA-Canada border confirms that this movement of Indian people is in fact integral to the culture and practices of particular nations such as the Mohawk Nation.

(ii) Other “National Interest Powers”:

- ***Management and regulation of the national economy, including “regulation of the national business framework”, fiscal and monetary policy, currency, the banking system, trade and competition policy,***

'CANADA'S POLICY' CONTINUED FROM PAGE 6

bankruptcy and insolvency; intellectual property, and the incorporation of federal corporations.

- *"maintenance of national law and order and substantive criminal law", including Criminal Code offenses and penalties and "other criminal laws", as well as emergencies and the peace, order and good government power.*
- *"Protection of health and safety of all Canadians".*
- *"Federal undertakings and other powers", including broadcasting and telecommunications, aeronautics, navigation & shipping, transportation, postal service, census and statistics.*

Provincial Role In Negotiations

The federal "Self-Government" policy makes it clear that provincial participation in negotiations is essential.

However, the reality of provincial powers, and their impact on what can be negotiated, is not dealt with in any detail in the federal Self-Government" policy. This silence should not be interpreted to mean that provincial governments will not also have their own lists of "negotiable" and "non-negotiable" items from their own menu of constitutional headings of power.

In fact, following the federal lead on the "self-government" policy, the Quebec government did develop its own negotiation policy in 1998, which is called "**Partnership, Development, Achievement**". This is covered in another section of this newsletter, along with the **Quebec Kahnawake Relations (QKR) Agreements**.

According to the federal "Self-Government" policy, any First Nation jurisdiction off reserve (i.e., harvesting, lands and resources, off-reserve members & services) or which affects the provincial headings of power (i.e., taxation, commerce) will require provincial - as well as federal - participation and consent.

Courts vs. Negotiation

Canada admits that its views on the nature and scope of the *"inherent right"* are *different than those of the First Nations*, and recognizes that **"the inherent right may be enforceable through the courts"**.

However, Canada says that it prefers negotiations:

"Litigation over the inherent right should be a last resort to implementation, both because of time and cost factors, and because the courts are most likely to provide only general guidance and leave it to the parties to work out detailed arrangements for the exercise of the inherent right..... Negotiations among governments and Aboriginal people are, therefore, the only practical and effective way of implementing the inherent right."

The federal "Self-Government" policy does not rule out the potential for litigation. It states clearly that if litigation is pursued, Canada will take a harder line on the nature and scope of the inherent right than what is offered through its "self-government" policy. Although in court Canada **"would not deny the general**



***"The federal
"self-
government"
policy makes it
clear that
provincial
participation in
negotiations is
essential."***





From one prison cell to another, "self-government" just means replacing the Indian Act with a new federal law to control and manage our affairs.

"even with "self government", Canada and the provinces will continue to control the purse strings and set priorities."



'CANADA'S POLICY' CONTINUED FROM PAGE 7

proposition that the inherent right of self government is an existing right within Section 35", it would argue for case by case review based on circumstances particular to the First Nation:

In individual cases consideration would be given... ***" to the particular history of an Aboriginal group, and its relationship, if any, to an existing land base."***

To try and limit the possibility of court action after agreements have been signed, Canada suggests that the agreements:

" ... may establish rules of priority to govern conflicts between validly enacted Aboriginal laws and federal or provincial laws and may provide for paramountcy of Aboriginal laws in areas that are purely internal to an Aboriginal community and integral to its distinct Aboriginal culture."
[emphasis added]

In the negotiations, Canada will decide just what is "integral" to a "distinct Aboriginal culture". This will not be left up to the First Nations.

Financing Self-Government

This is a crucial aspect of any effort at renewed institutions of Indian government, and promises to be one of the most contentious. Canada's "self-government" policy says that financing self government is ***"a shared responsibility of federal, provincial, territorial and Aboriginal governments"***.

Financial Responsibility and Control

Agreements on financing will take the form of tripartite agreements, as well as in some cases bilateral agreements between Canada and the province. Canada ***"will maintain its position that it has primary but not exclusive responsibility for on-reserve Indians.... while provinces have primary but not exclusive responsibility for other Aboriginal people"***. This means that the feds will pay most of the costs for on-reserve Indians and the Inuit, while the provinces will be expected to pay most of the costs for off-reserve Indians and Métis. Funding for self government must be affordable and consistent with the social and economic policies and priorities of [federal and provincial] governments. The fiscal and budgetary capacity of the federal, provincial, territorial and Aboriginal governments will be a primary determinant of the financing of self government.

This means that even with "self government", Canada and the provinces will continue to control the purse strings and set priorities. Note that First Nations "needs", or an equitable distribution of overall fiscal resources, are not mentioned at all with respect to the financing of self government.

Fiscal negotiations will instead focus on existing levels of funding, as well as the ability of "Aboriginal groups" to raise their own revenues, and efficiency & cost-effectiveness. These positions and their implications need to be connected to our earlier point made about taxation as a *non-inherent right*.

'CANADA'S POLICY' CONTINUED FROM PAGE 8

Maintain Existing Spending Levels

It is clearly stated that "**All federal costs associated with the implementation of self-government agreements will be accommodated within existing federal expenditures**". [emphasis added] This position is taken even with the acknowledgement that self government negotiations and new institutions, as well as one time start up costs, will represent considerable costs. In other words, there will be more to do with the same amount of money - so reductions in some areas will have to take place in order to free up funding resources for new areas of activity.

At the same time, the "Self-Government" policy bluntly takes the position that "self government agreements will not include any program enrichment", while ignoring the fundamental question as to whether or not existing program funding levels are adequate to meet needs.

However, it is held out that once self government agreements are in place, "Aboriginal governments" will be free to redirect their monies into whatever areas they want, "**subject to maintaining whatever statutory requirements and minimal standards of program & service delivery which may have been agreed upon**".

This is very similar to the position taken by Canada in its ongoing debate with the provinces about block funding transfer payments (i.e., health care, social services and education): overall levels of transfers will be reduced, but provinces will enjoy more flexibility with respect to how they spend the remainder.

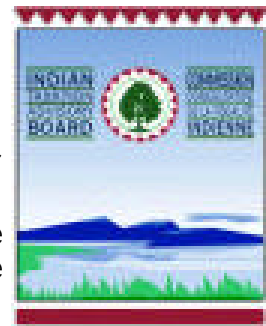
Canada says that governments should work together to "**harmonize funding, program and service arrangements to ensure the efficient and effective use of scarce resources**". This appears to mean that duplication of services and funding will be targeted during negotiations.

Taxation

"**Where feasible, Aboriginal governments and institutions should raise their own revenues in order to reduce reliance, over time, on transfers from other governments.**" This point is particularly important in light of the fact that *taxation does not appear on Canada's list of inherent rights, but rather on the next level of jurisdictions which remain federal* (see above).

According to the "self-government" policy, Indians who strike costly land claims deals and form their own governments should eventually pay taxes back into Canadian society. Crown governments are well aware that the financing of self government and Indian taxation are volatile issues. In this connection, they rely on public reaction to diminish Indian expectations.

At the same time, this approach betrays Canada's supposed commitment to recognition of the "*inherent right*": it is a generally accepted principle in Canada that all governments have a right to tax, and to be immune from tax by other governments. It is also accepted that governments are free to use taxation as a tool in promoting their economic and social policy objectives. Canada's exclusion of taxation from the list of "*inherent rights*", which it is prepared to recognize does not appear to allow for this recognition. Rather, it dooms Indian governments to perpetual dependence on Crown governments.



Logo of the Indian Taxation Advisory Board. This group is promoting that First Nations pay taxes.

"According to the "self-government" policy, Indians who strike costly land claims deals and form their own governments should eventually pay taxes back into Canadian society."





Joe Norton, MCK's Grand Chief from 1981-2004. Led the CKR & QKR negotiation processes for the MCK until his retirement from politics.

'CANADA'S POLICY' CONCLUSION FROM PAGE 9

CONCLUSION

As you can read, this is a complex policy with many different parts to it. The MCK has been negotiating under this policy for 10 years now with little results. Read the section on the MCK Agreements with Canada for more information on what this means for all Kahnawakero:non.

[Note: This analysis of the 1995 Federal "Aboriginal Self-Government" policy was extracted and updated from a document called "The Trojan Buffalo? Inherent Right, Federal Policy and the Bureaucracy". Prepared for Union of B. C. Indian Chiefs and the Union of Nova Scotia Indians, June 1995. Copies of this original document and other policy related documents can be received on request from the KTA Office.]

***"The Canada
Kahnawake
Relations
Process (CKR)
was created as
a result of the
1988 joint
RCMP/SQ raid
on tobacco
retail outlets in
Kahnawake."***

CANADA-KAHNAWAKE RELATIONS (CKR) AGREEMENTS

This section of our newsletter is focused on the Draft **Canada-Kahnawake Relations (CKR) Agreements**.

As we explained in the Canada "Self-Government" Policy section of this newsletter, Canada's position is that all "inherent rights" are conditional until the conclusion of negotiations and implementation agreements with the federal and provincial governments. In other words, the federal "inherent right" policy doesn't recognize that "inherent rights" exist until the federal and provincial governments say so through agreements.

MCK View on CKR Negotiations

We begin by letting the Canada-Kahnawake Relations Unit of the MCK, describe their perspective of the CKR process, which is as follows:

The Canada Kahnawake Relations Process (CKR) was created as a result of the 1988 joint RCMP/SQ raid on tobacco retail outlets in Kahnawake. In the early morning hours of June 1st, fully armed police officers in riot gear stormed into our community, destroyed property, confiscated material and arrested people. The raid was carried out because the Federal and Provincial Governments claimed their laws were being violated, they had the legal authority to enforce these laws and these laws applied to Kahnawa'kehró:non.

Immediately following the raid, a series of public meetings took place where hundreds of people gathered to express their outrage at this unwarranted police action. At the heart of the discussion was how outside governments were interfering with our rightful authority to exercise jurisdiction within our territory. The people demanded that negotiations take place at the highest levels of the Federal Government to confirm our territorial and economic jurisdiction.



An SQ Police Car



'CKR AGREEMENTS' CONTINUED FROM PAGE 10

At those meetings the Mohawk Council of Kahnawake (MCK) was mandated to:

- *Negotiate with Canada,*
- *Negotiate on Kahnawake's behalf,*
- *Eliminate the Indian Act from its application in Kahnawake, especially those sections that are negatively affecting our jurisdiction.*
- *Remove Canada's interference in our community decision-making process,*
- *Use imagination, innovation, and initiative to come up with a way to work out a renewed relationship with Canada.*

The Executive Director of the MCK at that time was directed to develop a proposal to initiate negotiations to establish a renewed relationship with Canada. On August 8, 1988, the Honourable Bill McKnight, then Minister of Indian Affairs, visited Kahnawake and agreed to establish a process for negotiations on issues of jurisdiction. After three and a half years of delays caused by elections, the Oka Crisis and the Quebec referendum, a framework agreement was signed on December 13, 1991. The Framework Agreement established the process and the agenda for the negotiations. The process is based on respect and recognition of our inherent right to exercise jurisdiction and to govern our affairs in our territory as directed by the community mandates and in accordance with the principles contained in the Two Row Wampum Treaty.

Between December 1991 and 1995, the process progressed very slowly. The Department of Indian Affairs approached the negotiations from the position that they would delegate powers of governance to us. Our position has always been that our governance powers stem from our inherent right to self-determination – they are not powers that can be given to us by any other government. In the summer of 1995, the Government of Canada announced its Inherent Right policy. The policy states that the government of Canada recognizes the inherent right of self government as an existing right within Section 35 of the Constitution Act 1982. Recognition of the inherent right is based on the view that Aboriginal people have the right to govern themselves. The announcement facilitated the CKR negotiation process and after several years of further discussions, it has resulted in an initial package which contains the following: an Umbrella Agreement confirming the overall principles of Kahnawake authority; four Sub-Agreements on Education, Mohawk Language and Culture; Policing Aspects of the Administration of Justice; Membership; Kahnawake Lands; and a Kahnawake Charter that outlines the power, authority and accountability for governance in Kahnawake.

As we can see from the previous statement, the MCK and the staff at the CKR Unit are pointing to the 1995 Federal "Inherent Right-Aboriginal Self-Government" policy as having "facilitated" the CKR negotiation process and resulted in the following Draft Agreements:



Logo of the Mohawk Council of Kahnawake

"the MCK and the staff at the CKR Unit are pointing to the 1995 Federal "Inherent Right-Aboriginal Self-Government" policy as having "facilitated" the CKR negotiation process "





Logo of the Federation of Canadian Municipalities.

‘CKR AGREEMENTS’ CONTINUED FROM PAGE 11

- Umbrella Agreement.
- Education, Mohawk Language & Culture Sub-Agreement.
- Policing Aspects of the Administration of Justice Sub-Agreement.
- Membership Sub-Agreement.
- Kahnawake Lands Sub-Agreement.
- Kahnawake Charter.

CKR UMBRELLA AGREEMENT

“the resulting federal law will essentially change the political and legal status of Kahnawake from the old relationship of being an “Indian Band” under the Indian Act, to a new relationship of basically becoming a municipality “

We will focus here on the Umbrella Agreement because this is the foundation, or framework for all of the **CKR Sub-Agreements**, and much of the **Quebec-Kahnawake Relations (QKR) Agreements**.

First of all, the draft **Umbrella Agreement** document is not the final text. The document is to be used as a guide by the federal government in their internal process to draft legislative wording for introduction of a Bill (draft law) into the House of Commons with the title **“Canada-Kahnawake Intergovernmental Relations Act” (CKIRA)**.

To be clear, the federal legislative process does not allow for the MCK to have any control—only consultation—over the final wording of the CKIRA in preparing a Bill for introduction into Parliament. It is an internal process to the federal government, particularly the Department of Justice. There is no guarantee—particularly in the current minority government situation—that the Bill won’t be amended/changed with wording that is unacceptable to Kahnawakero:non, or the MCK for that matter.

In any case, the **Umbrella Agreement** itself is in accordance with the federal “self-government” policy and if ratified by Kahnawakero:non and proclaimed into Canadian law, the resulting federal law will essentially change the political and legal status of Kahnawake from the old relationship of being an “Indian Band” under the Indian Act, to a new relationship of basically becoming a municipality “within the constitutional framework of Canada.” The CKIRA (new federal law) will not recognize Mohawk sovereignty, treaties and nationhood.

PURPOSE OF “CKIRA”

The “Preamble” is basically an introduction to the purpose of the **Umbrella Agreement** and the proposed federal legislation (**CKIRA**). Through the **Umbrella Agreement** the parties to the agreement, then **Grand Chief Joe Norton** and **Minister of Indian Affairs, Robert Nault**, assert the Agreement has the following purposes:

- *“affirm that this Agreement provides for a new relationship which reflects the principles of mutual respect between governments, co-existence, peace and friendship, and Kahnawake affirms that these principles are in keeping with the Two Row Wampum doctrine;” (emphasis added)*
- *“recognize the role of the Mohawk Government of Kahnawake in the preservation and promotion of Mohawk identity, culture and way of life;”*



The Two Row Wampum Belt is a symbol of the Treaty Relationship established between the Haudenosaunee and the Europeans starting in the 1600's.

'CKR AGREEMENTS' CONTINUED FROM PAGE 12

- *"recognize the Kanienkehaka of Kahnawake as having a special relationship to the land;"*
- *"this Agreement and the sub-agreements are a means by which the parties will strive to promote, in cooperation with one another, the economic advancement of Kahnawake;"*
- *"Canada recognizes that the inherent right of self-government is an existing aboriginal right within the meaning of section 35 of the Constitution Act, 1982."*

There are a few points to make about the stated purpose of the Draft **Umbrella Agreement**.

The first thing that should be noted is that it is not the "parties" to the Agreement that *"affirms that these principles are in keeping with the Two Row Wampum doctrine"*. It is Joe Norton on behalf of Kahnawake. This is significant because the federal Minister of Indian Affairs isn't in agreement on this point. Moreover, the term "Two Row Wampum Doctrine", is a long way from calling the Two Row Wampum a "treaty".

In fact, Kahnawakero:non have historic treaty rights not just from the Two Row Wampum, but other treaties were made with the French and English speaking Nations, which aren't even referred to in the **Umbrella Agreement**, which brings up the question, what impact would this proposed federal law have on Kahnawake's treaty rights?

Then there is the bold assertion that the "Mohawk Government of Kahnawake", meaning the MCK, has the responsibility for the *"promotion of Mohawk identity, culture and way of life"*. This goes a long way from the MCK's current role of delivering programs and services based on federal (and provincial) transfer payments with strings attached for education, including curriculum, cultural centre operations and economic development projects. There are broader community and family responsibilities on these matters.

Another thing to note on the purpose of the **Umbrella Agreement** is the reference by the "parties" to the Agreement to *"recognize the Kanienkehaka of Kahnawake as having a special relationship to the land"*. This essentially means existing Indian Act Reserve lands in Kahnawake and Doncaster. The **Umbrella Agreement** leaves the Seigneurie of Sault St. Louis and other land rights to be severed from the "self-government" negotiations process and left to the existing federal land claims policies and processes. This is a questionable negotiation strategy. After all it is the same governments who are at fault on the outstanding land rights issues.

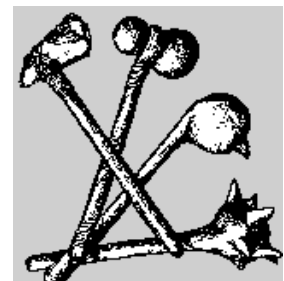
A key point on the purpose of this **Umbrella Agreement** is the assertion that *"this Agreement and the sub-agreements are a means by which the parties will strive to promote, in cooperation with one another, the economic advancement of Kahnawake"*.

Through this Agreement, the MCK dooms Kahnawake's "economic advancement"



Sir William Johnson, Superintendent of Indian Affairs during the Treaty-Making from 1760 until 1764.

"Kahnwakero:non have historic treaty rights not just from the Two Row Wampum, but other treaties were made with the French and English speaking Nations, which aren't even referred to in the Umbrella Agreement"





The official opening of the St. Lawrence Seaway at the St. Lambert Locks, April 1959. (Photo by National Archives of Canada)

“Through this Agreement, the MCK dooms Kahnawake’s “economic advancement” by making us dependent mainly on federal and provincial transfer payments for programs and services, such as, social assistance.”

‘CKR AGREEMENTS’ CONTINUED FROM PAGE 13

by making us dependent mainly on federal and provincial transfer payments for programs and services, such as, social assistance.

As evidenced by the **Umbrella Agreement** and the **Sub-Agreements**, The MCK already conceded in their negotiations that Canada has **“sovereignty”** and **“overriding national interests”** in key economic and fiscal policy areas.

The federal “self-government” policy that the MCK negotiated under clearly states that subjects that are not on the table for negotiation with the MCK are:

- **international trade, including tariffs and import/export controls.**
- **management and regulation of the national economy, including:**
- **regulation of the national business framework, fiscal and monetary policy.**
- **trade and competition policy.**
- **intellectual property.**
- **broadcasting and telecommunications.**
- **aeronautics.**
- **navigation and shipping.**
- **maintenance of national transportation systems.**

The only role the federal government is prepared to negotiate in these key subject areas is “administrative arrangements”, which means the MCK’s role would be to apply these federal laws on Kahnawake territory.

Without some agreement on recognizing some “pre-existing” Mohawk jurisdiction in these subject areas, there is little room for “economic advancement” for Kahnawake:non.

While **“taxation”** is on the table for negotiation, it is not considered an “inherent right” under the federal “self-government” policy, As was pointed out in another section of this newsletter, the position taken by Canada assumes that First Nation governments do not possess tax immunity or the authority to use taxation as a means of achieving social and economic policy objectives, even though these powers are clearly accepted as essential components of existing provincial and federal headings of power. In this sense, for Indian nations, the *“inherent right”* means less than what other governments take for granted. Let’s go through the main parts of the **CKR Umbrella Agreement**.

MAIN ELEMENTS OF AGREEMENT

Definitions:

This section provides definitions to the various terms used throughout the Agreement. It is intended to provide guidance for legal and policy interpretations of the federal law (CKIRA).

Some of the definitions worth noting that confirm the MCK’s concessions to the federal “self-government” policy are as follows:

- **acceptance of “federal laws of overriding national importance”;**
- **“interest”, with respect to Kahnawake Territory, means a legal interest,**



Aerial view of part of Kahnawake. (Photo courtesy of KSDPP)

‘CKR AGREEMENTS’ CONTINUED FROM PAGE 14

right or estate of any nature in or to that Territory, including a lease, easement, right of way, licence or permit but does not include title to, or an unperfected interest in, that Territory;

- *“Kahnawake or the Mohawks of Kahnawake” means, after the coming into force of the Legislation, the collectivity of the Mohawks of Kahnawake described in clause 58; [Clause 58 states: **Kahnawake is the collectivity of the Mohawks of Kahnawake known, prior to the coming into force of the Legislation, as the Kahnawake Band.**]*
- *“Kahnawake Mohawk Custom Code on Membership” means the codification of custom and traditions with respect to membership;*
- *“Kahnawake Lands or territory” means all existing Indian Act Reserve lands (Kahnawake and Doncaster). The Seigneurie of Sault St. Louis lands and other outstanding land rights aren’t included in the Agreement. They are left to the federal (and provincial) land claims policies.*
- *“member” means a member as defined in the Kahnawake Mohawk Custom Code on Membership;*
- *“Mohawk Government of Kahnawake” means the government of Kahnawake and includes the Mohawk Council of Kahnawake and any future form of government of Kahnawake;*
- *“sub-agreement” means an agreement with respect to a specific subject matter pursuant to clauses 9 or 15; [Clause 9 lists 27 subject areas for sub-agreements to be negotiated based upon the Umbrella Agreement and federal law (CKIRA), while clause 15 confirms that the list of subjects could be added to if “the parties agree”.*

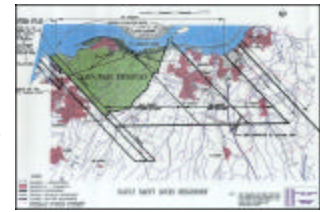
Purposes of the Legislation:

This section of the Agreement confirms that the legislation, if adopted, will establish a “new relationship” between Kahnawake and Canada. The federal law (CKIRA) will:

- change the Mohawk Council of Kahnawake into the Mohawk Government of Kahnawake (MGK):
- provide the MGK with the delegated powers over the 27 subject areas Canada has agreed to, listed in clause 9 of the Umbrella Agreement.
- The Indian Act provisions are removed from the 27 subject areas listed in clause 9 of the Umbrella Agreement.
- The federal law will provide the mechanism and process for giving the Sub-Agreements legal force and effect.

Non-Derogation:

This section states that the intent of the federal law (CKIRA) is not to “abrogate or derogate” (annul, repeal, detract from) the “existing aboriginal and treaty rights” of



Picture of a map depicting the Seigneurie of Sault St. Louis boundaries, lands belonging to Kahnawake that are illegally occupied by third parties.

“Kahnawake Lands or territory” means all existing Indian Act Reserve lands (Kahnawake and Doncaster). The Seigneurie of Sault St. Louis lands and other outstanding land rights aren’t included in the Agreement. They are left to the federal (and provincial) land claims policies.”



Aerial view of the Mercier Bridge. (Photo by Gov't of Quebec)

'CKR AGREEMENTS' CONTINUED FROM PAGE 15



"This section also entrenches the federal veto power over the MGK, thus confirming the delegated nature of the MGK's powers under the Umbrella Agreement and the intended federal law (CKIRA)."

the Mohawks of Kahnawake, which are protected in Section 35 of the Constitution Act 1982. However, this section is of little comfort when read against the rest of the Umbrella Agreement, and the intended federal law (CKIRA) to follow.

If this Agreement and federal law is adopted, we should expect the federal and provincial governments to argue in the future—at negotiation tables or in court—that the governance and land rights of the Kahnwakero:non are defined and agreed to in the CKIRA.

Kahnawake Governance:

This section involves:

- a list of 12 topic areas of a Kahnawake Charter involving internal Kahnawake governance matters, including the establishment of local institutions (i.e. leadership selection, rules for MGK, membership code, procedure for Charter Amendment).
- *"Kahnawake further affirms that it is engaged in a movement towards a traditional government based on the custom, traditions and traditional laws of the Iroquois Confederacy."*
- *"The Mohawk Government of Kahnawake and the institutions it creates are governed by the Kahnawake Charter."*

Jurisdiction:

This section contains the list of 27 subject areas, of local matters that the MGK will have powers to make local laws over.

This section also entrenches the Quebec veto power in "self-government" negotiations. Specifically this section states:

- *The parties recognize that certain subject matters in clause 9 may affect areas of provincial jurisdiction. With respect to these subject matters:*
- *(a) Kahnawake will negotiate tripartite agreements with Canada and Quebec, or bilateral agreements with both Canada and Quebec; and*
- *(b) the parties will make best efforts to ensure that any bilateral agreements between Kahnawake and Quebec, and between Kahnawake and Canada, are not inconsistent with one another.*

Sub-Agreements:

This section contains:

- the rules for the content of sub-agreements in the 27, local subject areas for MGK governance powers provided for in clause 9 of the Umbrella Agreement.
- the rules for adding to the list of (clause 9) 27 subject areas.

This section also entrenches the federal veto power over the MGK, thus confirming the delegated nature of the MGK's powers under the Umbrella Agreement and the intended federal law (CKIRA). This section specifically states:

- *Subsequent to the coming into force of the Legislation, a sub-agreement*



Kahnawake in 1907. (Photo courtesy of "The Valentine & Sons' Publishing Co. Ltd.)

'CKR AGREEMENTS' CONTINUED FROM PAGE 16

may be brought into effect by Order of the Governor in Council

- ***In the event of an agreement pursuant to clause 15*** [This clause provides for adding to the original list of the MGK's delegated governance powers as per the (clause 9) 27 subject areas, ***Canada will recommend to Parliament any consequential amendments to clause 9 and the Legislation.***

For a sub-agreement to become law, the federal Cabinet (Prime Minister & Ministers) must first pass an Order-in-Council (Resolution) approving the MGK clause 9 "sub-agreements".

If the MGK wants to add to the clause 9 list of MGK governance powers, it will require an amendment to the federal law (CKIRA) passing in Parliament. Additional MGK governance subjects will still need a federal Order-in-Council (Resolution) before any new sub-agreement becomes law.

Kahnawake Public Register:

This section simply provides for the MGK's commitments to make public its laws and local governance documents, such as the Kahnawake Charter and other "public documents".

Interim Provisions – Administration of Justice:

This section provides for interim measures for the local administration of justice in Kahnawake as a subject area in clause 9(b) of the Umbrella Agreement. The MCK is authorized to appoint Justices of the Peace ***"may try offences established pursuant to Kahnawake laws as specified in the sub-agreement"***, but ***"decisions made by a justice of the peace appointed under this part may be appealed to the court of competent jurisdiction that ordinarily hears appeals on summary conviction matters."***

Kahnawake Lands:

This section provides for how the existing Kahnawake lands will be defined under the new federal law (CKIRA). In summary this section will:

- remove the Indian Act provisions from the existing Reserves, although the lands will remain "lands reserved for Indians" within the meaning of Section 91(24) of Canada's constitution. They will not become fee simple lands under provincial law.
- the legal changes are "without prejudice" to outstanding claims and boundary disputes, but the federal land claims policies still apply.
- Canada agrees not to "diminish" the size of existing Kahnawake lands, but it should be noted there is no agreement to "expand" Kahnawake lands. This is because the MCK has agreed to separate land rights from governance negotiations. This is a fatal flaw in the Umbrella Agreement.
- All of the federal rights under the Indian Act for "granting and regulating" interests in Kahnawake lands will be transferred to Kahnawake through the



Aerial view of Kahnawake

"Canada agrees not to "diminish" the size of existing Kahnawake lands, but it should be noted there is no agreement to "expand" Kahnawake lands. This is because the MCK has agreed to separate land rights from governance negotiations. "





Government of Canada's Coat of Arms.

"This section provides for interpreting conflicts between MGK laws and federal laws. The MGK laws will prevail, except for federal laws of "overriding national importance", then the federal laws will prevail."



Court of Kahnawake. The court hears all Kahnawake Band By-Laws, Quebec Highway Safety Code and summary conviction offences under the criminal code of Canada.

'CKR AGREEMENTS' CONTINUED FROM PAGE 17

MGK.

- All existing local "interests" in Kahnawake lands (i.e. Certificates of Possession, permits, etc.) will be maintained under the new federal law (CKIRA).

General Liability:

The section provides for protecting Kahnawake from Canada's actions regarding "granting and regulating interests in land, capital and revenue" money, before the new federal law (CKIRA) takes effect.

This section also protects Canada from Kahnawake's actions regarding "granting and regulating interests in land, capital and revenue" money, after the new federal law (CKIRA) comes into effect.

There are provisions for either party getting paid for damages **"for any loss suffered"**.

Dispute Resolution Mechanism:

This section sets out stages and procedures for settling disputes in interpreting, application and implementation of legislation, sub-agreement and orders-in-council for any sub-agreement. The stages for dispute resolution are:

- **Negotiation.**
- **Mediation.**
- **Arbitration, and**
- **Judicial Review.**

Procedure for Removal of Indian Act:

This section provides for the MGK to commit to put in writing to Canada the date a new law under a sub-agreement comes into effect so that Canada will cease to apply the relevant provisions of the Indian Act.

Relationship of Laws:

This section provides for interpreting conflicts between MGK laws and federal laws. The MGK laws will prevail, except for federal laws of **"overriding national importance"**, then the federal laws will prevail.

Transition Provisions – Indian Act:

This section confirms that the Umbrella Agreement and federal law (CKIRA) will transfer all of the "Kahnawake Band" and related Indian Act responsibilities to the new "Kahnawake" legal entity created by passage of the new federal law (CKIRA).

This section also provides that section 35 of the Indian Act, the "expropriation" provision, will only cease to apply after **"consultation with the Government of Quebec"**, again, a provincial veto is implied here.

'CKR AGREEMENTS' CONTINUED FROM PAGE 18

Indian Monies – Kahnawake Band:

This section confirms that all "capital and revenue" money held by Canada for the "use and benefit" of Kahnawake will be transferred to the MGK when the new federal law (CKIRA) and sub-agreement on lands comes into effect.

Delegation of Powers by Kahnawake:

This section provides for giving the Kahnawake Charter legal effect, and "*Kahnawake may delegate any of its non-legislative powers under this Agreement to any Kahnawake institutions or to any other legal entity in Canada.*"

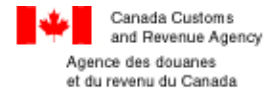
The section specifically states:

- *For greater certainty, Kahnawake, whether acting on its own, through the Mohawk Government of Kahnawake or through any body it designates in accordance with the Kahnawake Charter, is a legal entity with the rights, powers, privileges and capacity to:*
 - (a) *enter into contracts and agreements;*
 - (b) *acquire, hold and dispose of real or personal property, or any interest therein;*
 - (c) *raise, borrow, lend, invest or otherwise expend moneys, or provide guarantees in respect of the repayment of any moneys;*
 - (d) *act as the settlor or trustee of any trust;*
 - (e) *sue and be sued; and*
 - (f) *be appointed and to act as a guardian.*
- *Nothing in this Agreement will be interpreted to mean that Kahnawake whether acting on its own, through the Mohawk Government of Kahnawake or through anybody it designates, is a corporation.*

General Provisions:

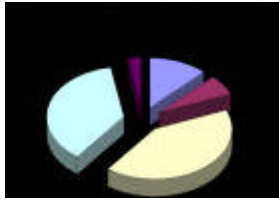
This section provides for general overall legal aspects of the "new relationship" between Kahnawake and Canada under the Umbrella Agreement and new federal law (CKIRA):

- the Canadian Charter of Rights and Freedoms to apply in Kahnawake for assertion of individual rights and possible challenges to Kahnawake laws. Although the MGK has a "without prejudice" provision included for future interpretation of this section.
- The fiduciary responsibilities of Canada will continue, but will change "evolve" [likely lessen] as Kahnawake takes over from Canada.
- There will be "co-existence" of some federal laws with Kahnawake laws. For "greater certainty" Kahnawake's jurisdiction doesn't include "criminal law",



*"There will be
"co-existence" of
some federal laws
with Kahnawake
laws. For "greater
certainty"
Kahnawake's
jurisdiction
doesn't include
"criminal law"*





"The parties will conclude an agreement specifying how and to what extent Kahnawake's own source revenue capacity will be taken into consideration in Financial Transfer Agreements"



'CKR AGREEMENTS' CONTINUED FROM PAGE 19

S.91(27) Constitution Act 1867.

- The Umbrella Agreement and Sub-Agreements may provide for some federal laws to stop applying to Kahnawake, the MGK, Kahnawake lands, members, or other individuals subject to Kahnawake laws.
- MGK commits to reach agreement with Kanesatake for exercising MGK jurisdiction at Doncaster.
- *"Kahnawake laws enacted pursuant to sub-agreements may provide for the imposition of penalties for the violation of those laws. Such penalties, which may include fines, restitution and imprisonment, will be within the limits set out for summary conviction offences in the Criminal Code of Canada, or the Code de procédure pénale du Québec, whichever are greater. Sub-agreements may provide for specific exceptions to these penalty limits and may provide for other types of sanctions that are in keeping with the traditions of the Mohawks of Kahnawake."*
- Canada will still be able to deliver programs and services to Kahnawake in English and French.
- A number of the other provisions are rules for interpretation in the event of conflicts between laws.

Fiscal Relations:

This section is an important one because it provides the legal basis for federal transfer payments to Kahnawake for programs and services.

The section specifically provides that the fiscal relationship:

- Will be "government-to-government", and financing of programs and services will be a "shared responsibility" between Canada and Kahnawake, and Quebec "from time to time". Kahnawake's contribution from "**own source revenues**" will be part of the calculation with a view to reducing the federal levels of funding.
- Canada maintains control over funding and will fund agreed upon programs at "**levels reasonably comparable**" to the rest of Southern Quebec, while taking into account Kahnawake's contribution (i.e. users fees, taxes, etc.). A separate "**Financial Transfer Agreement**" will have to be negotiated between Canada and Kahnawake.
- A number of principles for negotiation of funding for the MGK and other Kahnawake institutions are set out in this section.
- The funding agreements will be negotiated every 5 years, unless Canada agrees otherwise. It will be block funding, but subject to federal "**criteria or conditions**".
- The MGK agrees to adopt measures for internal and external accountability for spending of funds, particularly those funds voted by Parliament.
- Canada and MGK agree to address various procedures for negotiating Funding Agreements, including "information exchange" and "**implementation of an**

'CKR AGREEMENTS' CONTINUED FROM PAGE 20

Own Source Revenue Capacity Agreement. . . The parties will conclude an agreement specifying how and to what extent Kahnawake's own source revenue capacity will be taken into consideration in Financial Transfer Agreements at the time of the second Financial Transfer Agreement or no later than 7 years after the signature of the first Financial Transfer Agreement. [Note: "own source revenue" is Ottawa's code word for taxation (i.e. property and sales taxes). In fact, under the QKR the MCK is trying to replace the PST with a Kahnawake sales tax.]

- Kahnawake will still be eligible for future federal programs, subject to federal conditions.

Legislative Process:

This section provides for Kahnawake's role in the drafting of the new federal law (CKIRA) and Cabinet Orders-In-Council (O-I-C) for the sub-agreements.

The section specifically provides that:

- Canada will "**consult**" Kahnawake by providing drafts of the legislation and O-I-C's for sub-agreements and giving Kahnawake a "full opportunity" to present their views in the process, but Canada's commitment is that it will only "**consider**" the views of Kahnawake, because Parliament makes the final decisions on legislation and the federal Cabinet on O-I-C's.
- Canada will include in the new federal law (CKIRA) that Parliament will be permitted to review sub-agreements and the related O-I-C's, and Kahnawake will be given a description of the review process to be included in CKIRA.

Canada/Kahnawake Commission:

This section provides for the establishment, role, responsibilities and composition of a **Canada-Kahnawake Commission**.

The section specifically provides that the Commission will:

- Be the forum for liaison between Canada and Kahnawake to review implementation of the Umbrella Agreement and Sub-Agreements.
- The responsibilities of the Commission are to make recommendations on interpretation/implementation problems, within 5 years after CKIRA comes into effect, conduct a review of the implementation of the new federal law (CKIRA), unless Canada agrees to a different time-frame.
- There will be 2 Kahnawake and 2 Canada members on the Commission, but more can be added, including from Quebec, if Kahnawake and Canada agree.
- There is also provision for changing the mandate of the Commission depending on the outcome of the QKR negotiations and the participation of Quebec.
- Each party pays their own costs for participating in the Commission's activities/process.

Judicial Review:

The section provides that if a "court of competent jurisdiction" finds the Umbrella



"own source revenue" is Ottawa's code word for taxation (i.e. property and sales taxes). In fact, under the QKR the MCK is trying to replace the PST with a Kahnawake sales tax."





Federal Cabinet Ministers as of July 20, 2004.

“Canada’s ratification process will be 1) when a Minister of Crown signs, and Cabinet approves, the Umbrella Agreement and the sub-agreements; 2) when legislation (CKIRA) is passed in Parliament and 3) a sub-agreement if ratified when adopted by O-I-C by the federal Cabinet.”

‘CKR AGREEMENTS’ CONCLUSION FROM PAGE 21

Agreement of Sub-Agreements “void or invalid”, that the unaffected parts of the Umbrella agreement and Sub-Agreements remain in force.

Status of Agreement:

This section clarifies the status of the Umbrella Agreement by confirming that it is the basis for negotiations between Canada and Kahnawake, but that it **“does not create legal obligations binding on the parties.”**

Ratification Procedures:

This section provides for how ratification will be addressed.

The section specifically provides:

- **Rules and procedures for ratifying the Umbrella Agreement, the sub-agreements with respect to Education, Mohawk Language and Culture, Kahnawake Lands, Membership and Policing will be developed prior to the beginning of the ratification process.**
- **For greater certainty, Kahnawake will adopt the Kahnawake Charter prior to or at the same time as the Umbrella Agreement and the sub-agreements referred to in [the paragraph above].**
- Canada’s ratification process will be 1) when a Minister of Crown signs, and Cabinet approves, the Umbrella Agreement and the sub-agreements; 2) when legislation (CKIRA) is passed in Parliament and 3) a sub-agreement if ratified when adopted by O-I-C by the federal Cabinet.

Amendment Provisions:

This section provides for a process to amend the Umbrella Agreement (CKIRA).

The section specifically provides:

- Kahnawake will ratify amendments to the Umbrella Agreement/CKIRA according to “principles” in the Kahnawake Charter.
- Canada will recommend to Parliament “consequential amendments” to the new federal law (CKIRA).
- For sub-agreement amendments the process for Kahnawake is the same, the Kahnawake Charter will be used.
- Canada will recommend to the federal Cabinet changes to an O-I-C to amend a sub-agreement.

Implementation and Financing Agreements:

This section provides that an implementation plan must be attached, but not form part of a sub-agreement or the Umbrella Agreement.

[The original CKR Agreements are available from the KTA office if requested.]



QUEBEC'S "ABORIGINAL AFFAIRS" NEGOTIATION POLICY

Following the RCMP/SQ 1988 raids of tobacco retail outlets in Kahnawake and the crisis of 1990, according to the MCK, they began negotiations in 1991 with the federal government "to confirm [Kahnawake's] territorial and economic jurisdiction", and with the Quebec provincial government in 1998.

This section of the newsletter is to show what the Government of Quebec's negotiation policy is on "Aboriginal Affairs". This is the policy the MCK signed the **Quebec-Kahnawake Relations (QKR) Agreements** under.

What is Quebec's Policy?

In 1998, when Lucien Bouchard was still Premier of Quebec, and Guy Chevrette was the Minister Responsible for Aboriginal Affairs, the Quebec government issued its "guidelines" on "Aboriginal Affairs" called "Partnership, Development, Achievement".

As is the case with the 1995 federal "self-government" policy, the 1998 Quebec "guidelines" are for "Aboriginal" peoples, not just First Nations, or "Indians".

Scope of Policy – Multiple Issues

The Quebec negotiation policy is intended to promote "negotiated agreements" with "Aboriginal nations" on the major issues of:

- lands and resources.
- economic development.
- self-government, and
- financial "self-sufficiency".

The Quebec policy is based upon a "partnership" approach to address the social and economic gaps between "Aboriginal communities" and "other Quebecers". The policy concludes that "isolation" from the rest of Quebec society is the cause of the social problems and economic "under-development" of "Aboriginal communities" and states that the ***causes of their isolation, whether legal, cultural or other must be removed.***

This Quebec policy position takes a page from **Jean Chrétien's 1969 White Paper on Indian Policy**, which also used "equality" arguments to disguise the real assimilationist intention of Crown governments by proposing the termination of the "special rights" of "Indians", and treating them the same as other Canadians, or in this case, "other Quebecers".

While Quebec is prepared to recognize Aboriginal "identity" in negotiations relating to programs and services, the provincial position is that "Aboriginals" are Quebec citizens. There are definite "pre-conditions" to negotiations regarding land and "self-government".



Mohawk Warrior Flag, now a symbol of resistance across North America.

"the provincial position is that "Aboriginals" are Quebec citizens. There are definite "pre-conditions" to negotiations regarding land and "self-government"."



Quebec Flag, a provincial symbol.



First year of the Council of Elected Representatives
L to R: Premier Jean Charest with AFNQL Regional Chief Ghislaine Picard, signing onto a regional negotiation table.

“Aboriginal nations” are expected to submit to Quebec’s jurisdiction, laws, regulations and territorial claims, while accepting local administrative roles in delivering Quebec programs and services, albeit with some cultural adjustments to accommodate the Aboriginal “identity”



Quebec’s “Aboriginal” policies are based on positions taken by former Premier, Rene Levesque.

‘QUEBEC’S POLICY’ CONTINUED FROM PAGE 23

Pre-Conditions

In land and resources negotiations, Quebec’s objective is “maintaining the territorial integrity of Quebec”, which means Quebec intends to enter into agreements to obtain the extinguishment, or surrender of the Aboriginal Title and Rights of “Aboriginal nations” to their traditional lands.

Under the federal government’s **Comprehensive Land Claims Policy**--that Quebec and some First Nations are negotiating under--the term “extinguishment” has been replaced with a legal term called “certainty”. This term was used in the **Nisga’a Final Agreement** in B.C., and is just a fancy legal technique for achieving the same thing, extinguishment of Aboriginal Title and Rights for “treaty rights” in a so-called “modern treaty agreement”. The federal “Comprehensive Claims Policy” is the policy that the Crees, Naskapi and Inuit of Quebec negotiated the **James Bay and Northeastern Quebec Agreement (JBNQA)** under, and it is the policy the Innu and Attikamik in Quebec are currently negotiating land and resources issues under.

The pre-conditions for Quebec negotiating “self-government” are based upon the veto power that the federal “self-government” policy gives provinces in negotiations regarding “implementation agreements” with “Aboriginal people”. The Quebec policy also notes that the federal “self-government” policy **“excludes most federal powers from the inherent right of self-government of aboriginal people.”**

Quebec’s pre-conditions in negotiation with “Aboriginal nations” are:

- recognition of Quebec’s territorial integrity.
- recognition of the sovereignty of the Quebec National Assembly, and
- respect for Quebec’s legislative and regulatory framework.

Thus, “Aboriginal nations” are expected to submit to Quebec’s jurisdiction, laws, regulations and territorial claims, while accepting local administrative roles in delivering Quebec programs and services, albeit with some cultural adjustments to accommodate the Aboriginal “identity”.

Quebec Guidelines & Principles

The Quebec “Aboriginal Affairs” negotiation policy is based on the “15 principles” adopted by the Quebec government in 1983, which was essentially the same as the following resolution adopted by the Quebec National Assembly, on March 20, 1985:

MOTION FOR THE RECOGNITION OF ABORIGINAL RIGHTS IN QUÉBEC:

That this Assembly: Recognize the existence of the Abenaki, Algonquin, Attikamek, Cree, Huron, Micmac, Mohawk, Montagnais, Naskapi and Inuit nations in Québec;

‘QUEBEC’S POLICY’ CONTINUED FROM PAGE 24

Recognize existing aboriginal rights and those set forth in the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement;

Consider these agreements and all future agreements and accords of the same nature to have the same value as treaties;

Subscribe to the process whereby the Government has committed itself with the aboriginal peoples to better identifying and defining their rights—a process which rests upon historical legitimacy and the importance for Québec society to establish harmonious relations with the native peoples, based on mutual trust and a respect for rights;

Urge the Government to pursue negotiations with the aboriginal nations based on, but not limited to, the fifteen principles it approved on February 9, 1983, subsequent to proposals submitted to it on November 30, 1982, and to conclude with willing nations, or any of their constituent communities, agreements guaranteeing them the exercise of:

- a) the right to self-government within Québec;*
- b) the right to their own language, culture and traditions;*
- c) the right to own and control land;*
- d) the right to hunt, fish, trap, harvest and participate in wildlife management;*
- e) the right to participate in, and benefit from, the economic development of Québec; so as to develop as distinct nations having their own identity and exercising their rights within Québec;*

Declare that the rights of aboriginal peoples apply equally to men and women;

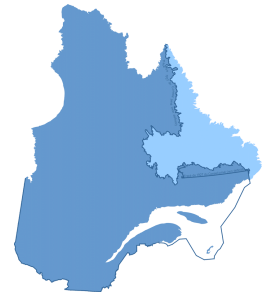
Affirm its will to protect, in its fundamental laws, the rights included in the agreements concluded with the aboriginal nations of Québec; and

Agree that a permanent parliamentary forum be established to enable the aboriginal peoples to express their rights, needs and aspirations.

Subsequently, on May 30, 1989, the National Assembly passed the following resolution recognizing the existence of the Malecite nation:

That the National Assembly recognize the existence in Québec of the Malecite nation in the same way as the ten other aboriginal nations recognized by the resolution of the National Assembly of March 20, 1985.

The wording of the above resolution, which was introduced by then Premier Rene Levesque, clearly maintains pre-conditions over “Aboriginal nations” being required to accept Quebec’s territorial claims, assertion of sovereignty and application of provincial laws.



“The wording of the . . . resolution. . . was introduced by then Premier Rene Levesque, clearly maintains pre-conditions over “Aboriginal nations” being required to accept Quebec’s territorial claims, assertion of sovereignty and application of provincial laws.”





“Self-Government issues will be negotiated as delegated authority from the Quebec government using the concept of “contractual jurisdiction”. An “Aboriginal body” or institution will be contracted by Quebec to implement Quebec’s laws, regulations and standards. ”



‘QUEBEC’S POLICY’ CONTINUED FROM PAGE 25

The 1998 Quebec “Aboriginal Affairs” negotiation position is to offer to negotiate “sectoral agreements” with “Aboriginal” nations and communities who are prepared to accept to exercise “self-government” within Quebec’s claimed territory, institutions and under Quebec’ laws.

Land issues will be negotiated under the following terms:

- Comprehensive Land Claims Policy (extinguishes Aboriginal Title and Rights).
- Additions-to-Reserve/Quebec policy, which is for infrastructure needs (i.e. housing, education, health, etc.)
- Additions-to-Reserve/Quebec policy, which is for “exceptional” community situations (i.e. Kanesatake).

All agreements must respect Quebec territorial integrity and jurisdiction.

Self-Government issues will be negotiated as delegated authority from the Quebec government using the concept of “contractual jurisdiction”. An “Aboriginal body” or institution will be contracted by Quebec to implement Quebec’s laws, regulations and standards. Quebec may amend its laws and regulations to “allow” local “Aboriginal institutions” to exercise Quebec responsibilities in the sectors involved.

Four Categories of Aboriginal Negotiations are identified in the Quebec policy:

- nations that are neither parties to agreements nor in comprehensive land claims negotiations;
- nations party to agreements;
- nations negotiating comprehensive land claims;
- aboriginal people living off-community.

For Kahnwakero:non the first and last categories are the ones Quebec applies to their negotiations with the MCK, Kahnawake is considered to be 1) part of a nation not party to an existing agreement or negotiating under the federal Comprehensive Land Claims policy, and 2) has community members “living off-community”, or “off-Reserve”.

Quebec’s negotiation policy allows for a “Framework Agreement” and “Sectoral Agreements” to be negotiated.

Quebec’s “off-Reserve” policy requires that any agreements with a “band council” must “stipulate” whether or not “off-Reserve” members are covered by the agreement.

Framework for Action

The Quebec “Aboriginal Affairs” negotiation policy is made up of the following components:

‘QUEBEC’S POLICY’ CONTINUED FROM PAGE 26

- establishment of Quebec-Aboriginal Commissions to create a joint forum during negotiations. Existing Quebec institutions will be used.
- implementing framework and sectoral agreements by *“setting development objectives, adapting the application of government policies, changing existing programs or introducing new measures for aboriginal people or aboriginal businesses.”*



The framework (and sectoral) agreements must contain the following:

- *objectives;*
- *parties to the agreement;*
- *beneficiaries of the agreement;*
- *the roles and responsibilities of each party;*
- *the aboriginal institutions recognized for carrying out responsibilities; activities covered;*
- *the territory covered by these activities;*
- *financing provisions, if necessary;*
- *established standards;*
- *those authorized for the implementation of the agreement;*
- *mechanisms for assessing the agreement;*
- *conditions for withdrawal from the agreement by any of the parties; liaison committee;*
- *transitional measures will have to be stipulated in the following cases: renewal of agreements;*
- *the period preceding adoption of legislative or regulatory amendments stemming from the conclusion of agreements;*
- *implementation of agreements over time.*

“implementing framework and sectoral agreements by “setting development objectives, adapting the application of government policies, changing existing programs or introducing new measures for aboriginal people or aboriginal businesses.”

Another component of Quebec’s “Aboriginal Affairs” negotiation policy involves the establishment of an “Aboriginal Economic Development Fund”. The fund is for: 1) Aboriginal economic development initiatives, and 2) community infrastructure projects (one time only).

Taxation issues are included in Quebec’s “Aboriginal Affairs” negotiation policy, which defines First Nation, or “Indians” tax status as follows:

- *the property of a registered Indian under federal law, purchased or delivered on a reserve, are exempt from GST and QST;*
- *purchases of tobacco on a reserve by a registered Indian are not subject to the tax applicable on this product;*





Grand Chief Joe Norton in spring of 2004, months before he retired from the MCK.

-This section of the newsletter is focused on the Quebec-Kahnawake Relations (QKR) Agreements, which then Grand Chief Joe Norton signed with the Quebec government, on behalf of all "Mohawks of Kahnawake", whether they participate in the elective system or not.



'QUEBEC'S POLICY' CONCLUSION FROM PAGE 27

- *fuel is not affected by the specific tax on fuel, if purchased on a reserve by a registered Indian residing on a reserve;*
- *the income of a registered Indian residing on a reserve and earned on a reserve is not taxable;*
- *in other cases, taxes apply.*

The Quebec government's policy states that it intends to maintain "the integrity of the federal and Quebec tax systems", but Quebec is prepared to negotiate withholding the tax rebates owed to "Aboriginal" consumers and would give the money directly to the "band council" instead, for economic development projects and community activities. The Quebec policy confirms that federal and Quebec legislation, regulatory and administrative changes would be required for this to happen.

Implementation

The Quebec "Aboriginal Affairs" negotiation policy makes it clear that the Quebec Aboriginal Affairs Secretariat (Secretariat affaires aux autochtones) will be the central coordination body for implementing this policy with other departments and agencies within the Quebec government.

[The Quebec Negotiation Policy is available from the KTA office if requested.]

QUEBEC-KAHNAWAKE RELATIONS (QKR) AGREEMENTS

This section of the newsletter is focused on the **Quebec-Kahnawake Relations (QKR) Agreements**, which then **Grand Chief Joe Norton** signed with the Quebec government, on behalf of all "**Mohawks of Kahnawake**", whether they participate in the elective system or not.

In the spring of 1998, the PQ government of then Premier, **Lucien Bouchard**, issued a negotiations policy on "**Aboriginal Affairs**" titled "**Partnership, Development, Achievement**". On October 15, 1998, in accordance with the Quebec policy, **Joe Norton** and **Guy Chevrette**, Quebec Minister Responsible for Aboriginal Affairs, signed a **Statement of Understanding and Mutual Respect** along with a **Framework Agreement** between Quebec and the Mohawks of Kahnawake. By March 30, 1999, Joe Norton and Guy Chevrette, signed **10 Sectoral Agreements**, in various subject matters.

The **Statement of Understanding and Mutual Respect** and the **Framework Agreement** between Quebec and the Mohawks of Kahnawake, set the foundation for the **10 Sectoral Agreements**, which are basically 10 negotiation-liaison processes between the MCK and the various Quebec government departments

'QKR AGREEMENTS' CONTINUED FROM PAGE 29

and agencies. The main purpose of the agreements is to reconcile the application of Quebec jurisdiction, laws and standards over the Mohawks of Kahnawake and Kahnawake Reserve lands, albeit with some possible amendments to Quebec laws and regulations.

The following is a summary of the Quebec-Kahnawake Relations (QKR) Agreements,

Statement of Understanding & Mutual Respect

This "Statement" of political intent was the first to be signed and it sets out the purpose of the process, which it states are:

- to develop a relationship based on the *"respective principles and concepts found in the Two Row Wampum and the document entitled Partnership, Development, Achievement."*
- Quebec and Kahnawake *"favor the route of discussion and negotiation for concluding and signing agreements that will be negotiated in various fields of jurisdiction."*
- Quebec and Kahnawake *"agree to negotiate with mutual respect for their national identities and each other's history and territorial occupation."*
- Quebec and Kahnawake *"agree to participate as partners in some of Kahnawake's economic development ventures. Québec also agrees to develop financial and fiscal arrangements that would provide for Kahnawake's long term economic stability."*

Quebec and Kahnawake confirm that *"each have already appointed a special negotiator with a view to the rapid conclusion of a framework agreement and specific agreements in the various fields of mutual interest."*

There is also a condition in the "Statement" that provides *"Nothing in this declaration prevents Kahnawake from continuing to exercise its prerogatives to conclude agreements with any other government, in the application of its jurisdiction through its legal institutions, and in accordance with its priorities."* This is a reference to Kahnawake's relationship with the Government of Canada and the Indian Act.

Framework Agreement

This agreement has two parts 1) a "preamble" or introduction explaining the background to the **Framework Agreement**, and 2) the main or operative clauses. These are the more binding sections of the **Framework Agreement**.

The **Framework Agreement** "preamble", or introduction, sets out that:

- the *"Mohawks of Kahnawake are part of the Mohawk Nation recognized by the National Assembly of Québec."*
- the *"Mohawks of Kahnawake govern themselves through the Mohawk Council of Kahnawake and exercise their rights through this Council."*



"The main purpose of the agreements is to reconcile the application of Quebec jurisdiction, laws and standards over the Mohawks of Kahnawake and Kahnawake Reserve lands, albeit with some possible amendments to Quebec laws and regulations."





“through these QKR Agreements, the MCK are asserting that they are representing the rights and interests of all of the “Mohawks of Kahnawake” in these negotiations with Quebec, and that the “long-term” relationship between Quebec and Kahnawake will be based upon the outcomes of the QKR Agreement processes.”



‘QKR AGREEMENTS’ CONTINUED FROM PAGE 29

- Quebec and Kahnawake *“want to establish a long term and constructive relationship based on respect and mutual trust by means of a framework agreement and specific agreements in various sectors of their relations.”*

So through these QKR Agreements, the MCK are asserting that they are representing the rights and interests of all of the “Mohawks of Kahnawake” in these negotiations with Quebec, and that the “long-term” relationship between Quebec and Kahnawake will be based upon the outcomes of the QKR Agreement processes.

The main purpose of the **Framework Agreement** is to *“establish a general framework that will lead to the conclusion of specific agreements on various sectors of common interest, in order to avoid conflicts and, if necessary, to resolve the latter by discussion and peaceful means in a spirit of understanding and mutual respect.”*

Other clauses set out the terms of Agreement between Quebec and Kahnawake:

- *“accept and recognize the respective distinctiveness and unique quality of their cultures, their languages, their laws, customs, traditions, as well as their national identities.”*
- *“reconcile the exercise of their respective powers and toward this end will negotiate specific agreements on various subject matters where there exists a shared interest.”*

The MCK Grand Chief and Quebec Minister Responsible for Aboriginal Affairs:

- *“are responsible for implementation of this Agreement and the monitoring of the ensuing negotiations.”*
- *“specific agreements will be negotiated in the following sectors, taxation; economic development, public security, administration of justice; user fees.”*
- *“each sectoral agreement shall specify, the nature and scope of the agreement, the duration of the agreement, the implementation plan.”*
- *“each sectoral agreement shall specify the procedure to be followed to avoid and, if necessary, resolve conflicts between the parties.”*
- *“a mechanism will be set up for the timely review and comment of draft or pending legislation or regulation which may impact the other party.”*
- *“Upon mutual agreement, the parties may invite other parties to the sectoral tables, including the Government of Canada, or invite the latter into a tripartite negotiation table.”*
- *“this agreement may be modified in whole or in part by deletion, addition or otherwise upon mutual acceptance in writing, signed by the parties.”*
- *“this Agreement will be for an indefinite time period. Any dispute concerning the interpretation or implementation of this Agreement shall be resolved through negotiations between the parties. Failing those*

'QKR AGREEMENTS' CONTINUED FROM PAGE 30

negotiations, each party will be able to terminate this Agreement by giving the other party a written notice, which shall take effect one month thereafter."

- *"this agreement is not intended to be an agreement or treaty as contemplated in section 35 of the Constitution Act 1982, nor is it to be interpreted in anyway as abrogating, derogating or negating or recognizing any aboriginal, treaty or other rights."*

The main terms of the **Framework Agreement set into motion the negotiations on the 10 Sectoral Agreements** signed five months later on March 30, 1999.

10 SECTORAL AGREEMENTS

On March 30, 1999, then Grand Chief Joe Norton, the then Deputy Prime Minister and Minister of State for the Economy and Finance, Mr. Bernard Landry, and the then Minister of Transport, Minister for Native Affairs, and Minister responsible for Wildlife and Parks, Mr. Guy Chevette, signed ten sectoral agreements following the Framework Agreement of October 15, 1998.

The agreements cover the fiscal matters related to:

- consumer goods and services;
- tobacco, fuel and alcoholic beverages;
- transportation and user fees;
- economic development;
- administration of justice;
- registration of births, marriages and deaths;
- child care;
- police services;
- combat sports; and
- liquor permits.

After Kahnawake and Québec signed a **Statement of Understanding and Mutual Respect, as well as a Framework Agreement**, on October 15, 1999, intensive negotiations involving seven Québec government departments were held to achieve these ten sectoral agreements. Five sectors had already been identified in the **Framework Agreement**, namely fiscal matters, economic development, public security, administration of justice and user fees. The issue of child care was subsequently added.



"On March 30, 1999, then Grand Chief Joe Norton, the then Deputy Prime Minister and Minister of State for the Economy and Finance, Mr. Bernard Landry, and the then Minister of Transport, Minister for Native Affairs, and Minister responsible for Wildlife and Parks, Mr. Guy Chevette, signed ten sectoral agreements "



Guy Chevette, then Minister Responsible for Aboriginal Affairs, also signed the 10 Agreements.

'QKR AGREEMENTS' CONTINUED FROM PAGE 31



Agreement on Fiscal Matters Related to Tobacco, Petroleum and Alcohol Products

Under this agreement, Quebec recognizes the Mohawks of Kahnawake have certain tax exemptions under the Indian Act, but to clear up "misunderstandings" and "conflicts" between Quebec and Kahnawake, the Agreement is to establish certain "principles" and "procedures" that will "define the relationship" in order to resolve the "misunderstandings" and avoid future "conflicts" in fiscal matters regarding tobacco, petroleum and alcohol products.



"The MCK agrees that unless Quebec agrees otherwise, "the supply of special products outside the Territory is subject to applicable taxes."



- The MCK agrees that the *"taxes covered by this Agreement are the tax on tobacco under the Tobacco Tax Act (R.S.Q., c. I-2), the tax on petroleum products under the Fuel Tax Act (R.S.Q., c.T-1) and the tax on alcoholic beverages under Title II of the Act respecting the Québec Sales Tax (R.S.Q., c.T-0.1), (hereinafter referred to collectively as "specific taxes")."*
- The MCK agrees to *"provide for a regulatory framework for the supply and sale of tobacco, petroleum and alcohol products (collectively referred to as "special products")"* on Reserve.
- The MCK agrees to *"establish a single supply system for all special products sold"* on Reserve.
- The MCK agrees that *"all special products supplied [on Reserve] to persons who are not Mohawks have been legally obtained from sources acceptable to"* Quebec.
- The MCK agrees that unless Quebec agrees otherwise, *"the supply of special products outside the Territory is subject to applicable taxes."*
- Quebec agrees that the *"Minister of Revenue shall [pay] to Kahnawake . . . the amount of the specific taxes which have been collected on the special products supplied [on Reserve] to Mohawks for personal use or consumption; no reimbursement of any specific tax will be made directly to an individual or merchant by Québec. . . This [payment] is made, following a request by the [MCK] on the terms and conditions determined by [Quebec]. The amount of the [payment] is calculated on the basis of the special products that have been supplied during the period through the single supply channel . . . to the Mohawk merchants and supplied again by them to the Mohawks for their own consumption."* (emphasis added)
- The MCK agrees that the costs of the Mohawk identification cards will be deducted from the payment to the MCK.
- The MCK agrees that *"in the event the retail price of the special products supplied [on Reserve] to persons who are not Mohawks are not within the prevailing market prices in the surrounding region, it shall not be attributable to operation of this Agreement"* and therefore subject to applicable laws.
- The MCK agrees to *"set up a joint mechanism for the monitoring of the general price levels [on Reserve] and in the surrounding region as provided"*

'QKR AGREEMENTS' CONTINUED FROM PAGE 32

in Schedule 2." (Schedule 2 provides for a joint MCK-Quebec monitoring and review process to make recommendations to set the retail prices of tobacco, petroleum and alcohol on Reserve to be equal to the prices off-Reserve.)

The remaining clauses provide for: 1) information exchange between the MCK and Quebec, 2) management of agreement process by an MCK Chief to be appointed and the Quebec Minister of Revenue, 3) establishment of a joint liaison committee., 4) defines the terms for amendment, renewal, implementation and termination of the Agreement.

There are two schedules to this Agreement:

- definitions, and
- process for monitoring price levels.

Agreement on Fiscal Matters Related to Consumer Goods and Services

This Agreement recognizes the tax exemptions through the Indian Act, as with the Agreement on Tobacco, Petroleum and Alcohol, this Agreement is to clear up "misunderstandings" and resolve "conflicts" between Quebec and Kahnawake by establishing certain "principles and procedures". There are four schedules that form part of this Agreement:

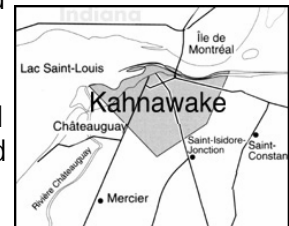
- definitions.
- monitoring of the general level of prices.
- reimbursement process and record keeping.
- list of tax exempt goods.

"The taxes covered by this Agreement are the Quebec sales tax (QST) under Title I of the Act respecting the Québec Sales Tax (R.S.Q, c. T-0.1) and the Goods and Services tax (GST) under Part IX of the Excise Tax Act (R.S.C. (1985) c.E-15), hereinafter referred to collectively as "sales taxes"."

"If an agreement cannot be concluded with Canada for the inclusion of the GST in this Agreement, the parties reserve the right to review this Agreement."

The MCK agrees that the fiscal regime provided for in this Agreement, will only apply to Mohawks of Kahnawake ***"who ordinarily reside [on-Reserve]"***. This leaves out Kahnawakero:non who don't reside in Kahnawake because of lack of housing, or for employment purposes, etc.

The terms of the Agreement provide that the goods and services purchased by a Mohawk of Kahnawake within the territory of Kahnawake will continue to be tax-exempt, but if non-Indians purchase goods and services within Kahnawake without paying the applicable taxes, then these transactions will still be subject [to applicable laws].



"The terms of the Agreement provide that the goods and services purchased by a Mohawk of Kahnawake within the territory of Kahnawake will continue to be tax-exempt, but if non-Indians purchase goods and services within Kahnawake without paying the applicable taxes, then these transactions will still be subject [to applicable laws.]"



SHOP KAHNAWAKE!

'QKR AGREEMENTS' CONTINUED FROM PAGE 33



"There is a provision in this Agreement for the MCK to possibly establish a Kahnawake Sales Tax".

There is a provision in this Agreement for the MCK to possibly establish a "Kahnawake Sales Tax". The Agreement states that the MCK ***"may replace the sales taxes by a charge or fee the proceeds of which shall remain in Kahnawake, and the amount of which shall be harmonized with the amount of the QST and the GST."***

[NOTE: The Government of Canada has already entered into Agreements with "Band Councils" in British Columbia to replace the federal and provincial sales taxes with a "First Nations Tax", not just for non-Indians, but for everyone purchasing on-Reserve. The federal "self-government" policy says that this is a form of ***"own source revenue"***, along with property taxes.]

The MCK agrees to identify ***"all Mohawk merchants carrying on retail businesses [on Reserve] and differentiating them from the Mohawk merchants carrying on wholesale or manufacturing businesses [on Reserve]."***

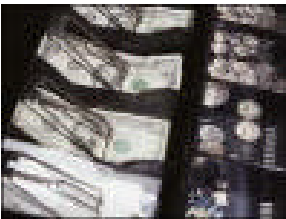
Off-Reserve, purchases of goods by a Mohawk of Kahnawake was to have been tax-exempt upon presentation of an identification card. However, so far, the card system was not established.

The Mohawk Council of Kahnawake was to have primary responsibility for overseeing the effective operation of this identification card system. For the purposes of this agreement the parties agree to share and exchange information on the list of card-holders.

A joint liaison committee is established. Terms for changing or ending the Agreement are spelled out.

Agreement on Transport and User Fees

This agreement settled the issue of user fees. Quebec agrees to pay Kahnawake \$2 million annually (according to an adjustment formula) for use of certain roads. There are terms for sharing of responsibilities in regard to the management of the road system. It stipulated payment of compensation in the amount of \$2 million by Québec to Kahnawake for the use of its territory for the purposes of highways 132, 138 and 207.



Quebec agrees that Kahnawake will be fully responsible for the management of roads located within its territory. The agreement also stipulates the implementation of arrangements needed to improve public transit: traffic control, traffic signals, police services and other related matters.

There are three schedules to this agreement:

- roads for which user fees are payable;
- roads for which Kahnawake is responsible and;
- financial transfer adjustment formula.

'QKR AGREEMENTS' CONTINUED FROM PAGE 34

Agreement on Economic Development

This purpose of this Agreement is to enhance the economic development and job creation for the Mohawks of Kahnawake. The Agreement confirms that economic projects from Kahnawake will be able to benefit from Quebec's "Aboriginal Development Fund" which was set up in 1999. In addition, Quebec confirms that Kahnawake will continue to be eligible for the Québec government's regular assistance programs. A joint liaison committee is established. Terms for changing or ending the Agreement are spelled out.

Agreement on the Administration of Justice

This Agreement, provides for: 1) a negotiation process to establish and implement a mediation system for family matters, youth, civil disputes (small claims), 2) the appointment of justices of the peace and 3) the solemnization of civil marriages.

The remaining provisions set up a liaison committee and spell out the terms for changing or ending the Agreement.

Agreement on the Registration of Births, Marriages and Deaths

The purpose of this agreement is to facilitate cooperation between Quebec's Director of civil status and the Kahnawake Registrar regarding the registration of births, marriages and deaths, while avoiding duplication of administrative procedures. It also provides for Quebec to register traditional Mohawk names, along with given names at birth.

The remaining provisions set up a liaison committee and spell out the terms for changing or ending the Agreement.

Agreement on Child Care

This agreement enables Quebec's Ministère de la Famille et de l'Enfance "***within applicable laws***" to recognize the Kahnawake child care centre. This centre will be recognized as a non-profit legal person. "***The Act respecting childcare centers and childcare services (hereinafter referred to as "the Act") applies to the Center to the extent that it is not incompatible with this Agreement.***"

The remaining provisions set up a liaison committee and spell out the terms for changing or ending the Agreement.

Agreement on Police Services

The purpose of this agreement is to "***define the framework for effective cooperation between the parties regarding police services to maintain peace, order and public security in Kahnawake.***" It is different from previous agreements on policing in that it is now bipartite between Québec and Kahnawake. A separate agreement will be signed with Canada.



MCK-Quebec signing 10 QKR Agreements. (Photo by the Eastern Door)

"This agreement enables Quebec's Ministère de la Famille et de l'Enfance "within applicable laws" to recognize the Kahnawake child care centre. This centre will be recognized as a non-profit legal person. "The Act respecting childcare centers and childcare services (hereinafter referred to as "the Act") applies to the Center to the extent that it is not incompatible with this Agreement."



Photo by the Eastern Door.



Kahnawake Peacekeeper with "Rocky" K-9 member. (Photo by Kahnawake Peacekeepers)

"The MCK agrees to maintain the Peacekeepers "for maintaining peace, order and public security within the Kahnawake [Reserve], for the prevention of crime and offences pursuant to the laws applicable within the [Kahnawake Reserve] and to seeking out offenders."

'QKR AGREEMENTS' CONTINUED FROM PAGE 35

This Agreement sets out Quebec's funding contribution to Kahnawake's policing services. There are two schedules that form part of this Agreement:

- provisions of Code of Ethics of Kahnawake Peacekeepers.
- eligibility – hiring standards.

The MCK agrees to maintain the Peacekeepers ***"for maintaining peace, order and public security within the Kahnawake [Reserve], for the prevention of crime and offences pursuant to the laws applicable within the [Kahnawake Reserve] and to seeking out offenders."*** (emphasis added)

[NOTE: The federal "self-government" policy (CKR) asserts that "overriding national interests" are not on the table for negotiation, such as, ***"maintenance of national law and order and substantive criminal law", including Criminal Code offenses and penalties and "other criminal laws", as well as emergencies and the peace, order and good government power.***]

There are provisions for the "independence and accountability" of the Peacekeepers, including the role of the Peacekeepers Administrative Board (PAB), along with: 1) eligibility-hiring standards., 2) swearing-in. and 3) code of professional conduct.

Additional provisions state that:

- ***"It is understood that this Agreement is not intended to modify the mandates attributed by law to the Sûreté du Québec, the RCMP and the Kahnawake Peacekeepers."***
- Quebec and the MCK agree that ***"the Sûreté du Québec and the Kahnawake Peacekeepers must take the necessary steps to ensure mutual assistance and cooperation with respect to the effective monitoring of compliance with applicable legislation."*** (emphasis added)
- Quebec and the MCK agree that ***"signed operational protocols have been or could be developed as between the Peacekeepers and the Sûreté du Québec, the Peacekeepers and the RCMP, and the Peacekeepers and the MUC. Such other police forces as are found to require a working relationship with the Peacekeepers may also develop a protocol with the Peacekeepers."***

The remaining provisions set up a liaison committee and spell out the terms for changing or ending the Agreement.

Agreement on Combat Sports

This agreement sets up a ***"framework for effective cooperation between the parties regarding the issue and control of permits for professional combat sports within the [Kahnawake Reserve]."***

The MCK agrees to establish the Kahnawake Athletic Commission, which is responsible for issuing, suspension and cancellation of permits, but the



'QKR AGREEMENTS' CONCLUSION FROM PAGE 36

"Commission and the Régie des alcools, des courses et des jeux, hereinafter called the "Régie" agree to cooperate and harmonize their respective rules regulations, interpretations and processes." (emphasis added)

There are other provisions establishing a liaison committee and the terms for changing or ending this Agreement.

Agreement on Liquor Permits

This agreement sets up a *"framework for effective cooperation between the parties regarding the issue and control of liquor permits within the [Reserve]."*

There are two schedules that form part of this Agreement:

- categories of liquor permits.
- list of suppliers.
- The MCK agrees that the two schedules *"shall not be interpreted as to limit the scope of applicable laws, regulations and rules"*.
- The MCK agrees to establish a supervisory board called the "Alcohol Beverages Control Board" (ABC Board).
- *"The ABC Board has the authority to issue, suspend, revoke and control the use of liquor permits governed by this Agreement in the [Kahnawake Reserve] according to applicable laws."* (emphasis added)
- *"The ABC Board and the Régie des alcools, des courses et des jeux, hereinafter called the "Régie" agree to cooperate and harmonize their respective rules, regulations, interpretations and processes."*
- The MCK agrees that alcoholic beverages supplied or sold within the [Kahnawake Reserve] must be obtained from the Société des alcools du Québec or other authorized sources.

There are provisions that address: 1) prosecution. 2) inspection. 3) seizure and custody of alcohol, and 4) information-sharing.

There are also provisions establishing a liaison committee and the terms for changing or ending the Agreement.

CONCLUSION

In general, the agreements were for five years and are renewed automatically, unless written notice to the contrary is given by either party. They do not have treaty force. Each of the **10 Sectoral Agreements** established a joint liaison committee to oversee the implementation of each agreement.

Grand Chief Mike Delisle Jr. has said that the **10 Sectoral Agreements** have been extended until March 31, 2005, but the MCK is renegotiating them right now.



MCK Grand Chief
Mike Delisle Jr.,
now re-negotiating
the 10 Agreements
with Quebec.

*"Grand Chief
Mike Delisle Jr.
has said that the
10 Sectoral
Agreements
have been
extended until
March 31, 2005,
but the MCK is
renegotiating
them right now."*



Benoit Pelletier, Minister
Responsible for
Aboriginal Affairs,
Government of Quebec.

**NEWSLETTER
OF THE
KAHNAWAKE
TOBACCO
ASSOCIATION**

Kahnawake Tobacco
Association
Kahnawake,
Mohawk Territory
Phone: (450) 638-4234
Email:
kta@kahnawaketobacco
association.com

We're on the Web!
[www.kahnawaketobacco
association.com](http://www.kahnawaketobaccoassociation.com)



Contributing to the Future of Kahnawake



Kahnawake Tobacco Association
Contributing to the Future of Kahnawake

In the spirit of cooperation the Kahnawake Tobacco Association was formed to unite retailers, wholesalers and manufacturers in the trade and commerce of tobacco products.

During our existence, we have made great strides in providing employment and stabilizing the industry.

As a group, we operate openly and with complete transparency.

With these goals in mind, we are happy to inform the people of Kahnawake that we have contributed over \$165,000 to benefit various individuals and organizations and will continue to assist our people in the future.

If you would like to see any of the documents referred to in this newsletter, please drop in at the KTA office.

'FINAL SOLUTION POLICIES' CONCLUSION FROM PAGE 1

In 1998, following up on Canada's offer of a veto to provinces in "self-government" negotiations, the Government of Quebec developed a negotiations policy called "**Partnership, Development, Achievement**". The Quebec negotiation position on self-government matters, including economic development fiscal (and taxation) relations, is based upon Quebec's "territorial integrity", which means their claim to the lands and natural resources, and the sovereignty of Quebec's National Assembly, which means Quebec laws applying to First Nations in areas of provincial jurisdiction under Canada's constitution.. Locally, we know this from the **1998 Quebec-Kahnawake Relations (QKR) Agreements**, which include a **Statement of Understanding, Framework Agreement** and **10 Sectoral Agreements**.

Together, the federal and Quebec negotiation policies and the MCK Agreements signed under these policies, are designed to change the political and legal status of Kahnawakero:non into that of a municipality. If the people don't act now, then the 'final solution' policies of the federal and Quebec governments will succeed in extinguishing the Mohawk Nation at Kahnawake. We are offering the information contained in this newsletter to all community members so we all will know what we are facing as a community. Together, we can take corrective actions to build a sustainable community economy by defending our rights!.

- KTA Board of Representatives.