

EXPERT REPORT

R. v DEREK WHITE AND HUNTER MONTOUR

SUPERIOR COURT FILE NUMBER 505-01-137394-165

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Kahnawake Mohawk Territory

August 30, 2019

(Copy Edited Version - November 21, 2021)

Statement of Professional Expertise

I have been retained by Nathan Richards and James O'Reilly to present my professional opinion on issues of Indigenous nationhood and the question of sovereignty of the Mohawks of Kahnawake in the Motion to Stay Proceedings (constitutional challenge) in the prosecution of Derek White and Hunter Montour. I wish to make clear at the outset that the opinions expressed in this report are mine alone and based on the knowledge I have been gifted with through teachings shared by elders and cultural knowledge holders and which I have accumulated through my studies, work as a scholar and life experience as a Mohawk of Kahnawake.

I am *Kahnawakero:non*, a Kahnawake Mohawk, and I was raised in the community since my birth. I lived in Kahnawake full-time until I was 32 years old (1996) and have since been dividing my time between Kahnawake and the territory of the Wsanec Nation, aka Victoria, British Columbia. I was a university professor for 25 years at both Concordia University and the University of Victoria before leaving academia in February 2019 to pursue community work on a full time basis. I have a degree in history from Concordia University and an M.A. and Ph.D. in political science from Cornell University, where my major fields of study were comparative government and political philosophy. I have been active as a practitioner in Kahnawake's government and that of other Indigenous communities since 1987. I have served Kahnawake in a number of political and professional capacities under the auspices of the Mohawk Council of Kahnawake (MCK), including as a researcher and writer, political advisor, negotiator, and as a consultant on land and governance matters. I have also been engaged as an expert witness for the MCK in two previous court cases, both related to the community's establishment of its own membership laws. I am currently under contract with the MCK to assist its Office of the Council of Chiefs in a review of its governance framework.

My area of professional expertise is the field of Indigenous governance with a particular focus on Indigenous political mobilization and traditional philosophy, with an emphasis on the history and institutions of governance among the *Kanien'kehaka* (Mohawk Nation) and *Haudenosaunee* (Iroquois Confederacy), especially pertaining to Kahnawake. I am generally acknowledged as the senior and leading scholar in the field of Indigenous Studies, having founded the first academic program in the field and originated the currently dominant intellectual paradigm known as "Indigenous Resurgence." I have published three scholarly books and numerous academic articles in a body of work that is foundational to the field and widely used as source material in university courses and by researchers worldwide.

My research practice reflects the standard social science method of Participant Observation, which centers on the immersion of researchers in the context of their subject and the acquisition of knowledge through the researchers' self-reflexive process of engaging in activities and participating in the life of the community or organization they are studying. The researchers then write about their experience and develop new knowledge based on the observations and insights they gained through their direct experiences within the community or organization. With this method, researchers have a dual responsibility: to respect both academic processes, principles and research ethics, and to respect the integrity and needs of the community or organization which they are engaging with. All of the work I have done in my career, including this report, has been produced using this method.

Beyond this technical method, the work I do as a scholar and governance consultant is based on the three principles at the core of my cultural heritage as a Mohawk person. I seek to embody and enliven these traditional philosophical principles, which are interrelated elements in our world view, and which Haudenosaunee people believe are the foundations of a strong, healthy

and free existence on both an individual and collective level for all people. The first of these principles is *skennen*, a word that translates to English as peace. This principle embodies the conventional understanding of peace to mean a commitment to non-violence, in both word and deed, and an active commitment to generating peace. It also reflects sensitivity to a person's inner state; it is close to the meaning of the English phrase “peace of mind” and represents an ideal state of balance that may be achieved inside of a person when they are self-aware and living in harmony with the laws of nature.

The second principle is *kashasten'shera*, a word which translates to English as power or strength. This principle embodies an understanding of strength as a quality, rather than a relational measure of force. It is a holistic quality that emerges in a person or among a group of people when they are spiritually and socially unified – when all of their essential connections are respected. As an individual quality, it is a state of self-confidence and spiritual security that emerges when a person possesses a unified identity and conception of their role in society and in the universe, and which allows them to project that inherent power in their relations with other elements of the natural world.

The third principle is *kariwio*, a word which translates to English as righteousness or justice. This principle is achieved when respect is the foundation of relationships among different people and between groups of people. The core elements of the Haudenosaunee worldview come together and connect in this notion: justice is the way of living respectful relationships and generating strength through unity and knowledge in order to achieve peace as both an inner mental and spiritual state and as the elimination of violence from our lives. These are the values that guide my practice as a scholar, a political practitioner and as an *Onkwehonwe*, an Indigenous person, and which I have brought to the work of writing this report.

Current Governing Institutions in Kahnawake

There are currently three governing authorities within the territory of Kahnawake: the Mohawk Council of Kahnawake (MCK) and two distinct institutions of traditional Iroquois-style government referred to as Longhouses (the “207 Longhouse” and the “Mohawk Trail Longhouse” named for their respective locations).

The MCK is the governing body which is recognized by Canada within the band council / First Nation system of government and it derives its authority primarily through Kahnawake’s collective and autonomous right to self-government, but also through Canadian statutes such as the *Indian Act*. The MCK is the main body responsible for the provision of programs and services within the territory and is the central institution for funding and administration.

The MCK is supported by a majority of community members and is composed of a Grand Chief and eleven council members elected by a plurality of votes in general elections held every three years. However, there are two parallel institutions, modelled on the traditional Iroquois model of government, which represent, on a political level, those Mohawks who contest the legitimacy of the MCK as a governing body. The traditional Iroquois-style governments, local modes of governance in relation to the broader Grand Council of the Iroquois Confederacy, are established and function in accord with the principles and laws of the Iroquois Confederacy and are the focal point of social, cultural and political activity for a significant number of Kahnawake Mohawks, especially in regard to the promotion of the language and cultural restoration efforts as well as the defense of the territory.

In terms of the political character of the community, the Mohawks of Kahnawake as a collectivity have always been and remain a distinct and autonomous community of people who

have defended their autonomy from external authorities – this is at the core of their political identity. Kahnawake was originally formed as a unique cultural and political community in relation to the Mohawk Nation and Iroquois Confederacy. At its core, Kahnawake remains culturally and politically resistant to efforts to erode its autonomy and to impose externally derived identities – within the Haudenosaunee context it was and remains profoundly independent and Kahnawake Mohawks have resisted all attempts to assimilate to other non-Indigenous political communities or to compromise their autonomous collective existence as Mohawks and Iroquois people.

The Historical Evolution of Governance in Kahnawake

The Mohawks of Kahnawake are part of the group of related peoples who have inhabited what is now known as the St. Lawrence Valley and the Adirondack Mountain region and their environs for millennia, and who eventually unified to form the Iroquois Confederacy consisting of the Mohawk, Cayuga, Seneca, Oneida, Onondaga, and later on, the Tuscorora nations. The Mohawks of Kahnawake are directly descended from people who at the time of first contact with Europeans were concentrated in a number of residential settlements along the Mohawk River Valley, in what is now known as central New York State. Prior to the colonial era, the Mohawks controlled a large corridor of territory. *Kanienke*, the Mohawk homeland, included the area bounded by the St Lawrence River to the north from present-day Trois Rivières to the Oswegatchie river near Prescott, Ontario; to the east, by the Adirondacks west of the Hudson River-Lake Champlain-Lake George waterway all the way from present-day Albany, N.Y. to Sorel on the south shore of the St Lawrence; and above the Mohawk River from the Hudson River to Oneida Lake in central New York.

Today, Mohawks inhabit eight communities in what is now known as Ontario, Quebec and New York. These communities collectively form the Mohawk Nation, and they are united through a common national identity, a shared language and cultural practices, and kinship (both through extensive intermarriage and in the Iroquois clan system in which all members of the nation belong to one of four clans: the Bear, Wolf, Turtle and Snipe). There are also extensive economic and trade relationships and political connections (through both the traditional Longhouse system and in the Iroquois Caucus, an informal organization of the elected system governments within the territories) which link the communities. The communities of the Mohawk Nation are:

- *Wáhta* - In the Muskoka Lakes region of Georgian Bay, north of Toronto.
- *Oshwé:ken* - On the Grand River; near Hamilton, Ontario.
- *Tyendinega* - On the Bay of Quite; near Belleville, Ontario.
- *Ganienkeh* - West of Plattsburgh, New York.
- *Kana'tsioharé:ke* – On the Mohawk River; west of Albany, New York.
- *Ahkwesáhsne* - On the St. Lawrence River; straddling the US/Canadian border near Cornwall, Ontario and Massena, New York.
- *Kanehsatà:ke* – On the Lake of Two Mountains; west of Montreal, Quebec.
- *Kahnawà:ke* – On the St. Lawrence River; south of Montreal, Quebec.

i. *Social, cultural and political organization of the Iroquois Confederacy*

The pre-European Iroquois social, cultural and political reality remains a potent intellectual force among the Kahnawake Mohawk. The principles established in Mohawk society before contact with Europeans retain much of their importance and power, and have been the spiritual, cultural and political framework for their evolution as a political community.

The culture that developed in this region has been noted as being the most sophisticated example of Indigenous political organization and philosophy on the continent. The ancestral Iroquois were political beings to their core. The origins of their political culture lay in a time when the peoples who would later make up the Iroquois Confederacy suffered intertribal warfare at a time when political and social order had yet to be established among the Mohawk, Seneca, Oneida, Onondaga and Cayuga nations. Their oral traditions contain the story of how their ancestors overcame the conflict and devised a form of association explicitly engineered, in the political realm, to manage power relations between nations.

The Iroquois Confederacy was established based upon the principles contained in a message delivered by the Peacemaker, a Huron who lived among the Iroquois and who was instrumental in bringing the five nations together in a political union. The message, which has become the central element in the Iroquois' political ideology, is known as the *Kaienerekowa* or Great Law of Peace. Having since taken on spiritual significance for the people of the Confederacy it established, the *Kaienerekowa's* detailed instructions on social and political organization, international relations, leadership selection and decision-making processes remain essential components of the Mohawk political culture, both explicitly in the workings of the Longhouses

as well as in aspirational principles for the MCK in its stated commitment to restore traditional government in the territory.

ii. *Conflict between the Iroquois Confederacy and the Europeans*

The other element that rivals the *Kaienerekowa* as an influencing factor on Iroquois political culture is the *Kahswentha* or the Two Row Wampum. Physically, the *Kahswentha* is a broad belt constructed of quahog shells in the design of two parallel purple rows on a white background and represents an oral record of the treaty established between the Mohawk people and the first Europeans that came into their territory. Dating from the sixteenth century, it documents a treaty with the Dutch who travelled up the Hudson River. The *Kahswentha* is a powerful symbolic representation of the relationship agreed to by the Mohawks with all subsequent Europeans. Thus the ideal of a commitment to harmonious co-existence and sharing of resources, along with mutual guarantees of non-interference and recognition of each other's distinctiveness, was established in the Iroquois political culture from the time of earliest contact with the European newcomers.

Since the beginning of the seventeenth century, the Iroquois had been at war with New France. A first encounter in 1609 between Mohawks and Samuel de Champlain at Schenectady on Lake Champlain led to the French killing a number of Mohawk warriors. The initial impression of the first encounter coloured the relationship for years, as the Mohawks led the Confederacy in an attempt to destroy the French settlements in Montreal and Quebec and drive the colony of New France from the St. Lawrence Valley.

Using religion as an instrument of diplomacy, the French sent missionaries among the Onondaga, where the central fire of the Iroquois Confederacy is located, and established an

accord with the Onondaga chiefs which led to peace between the Confederacy and the French in the middle of the seventeenth century.

The Mohawks refused to participate themselves in a peace treaty with the French and were thus forced to confront New France alone. Beginning in 1666, the French launched two campaigns into Mohawk country. The first march was in the winter and failed; the second was in the spring of 1667 and culminated in the destruction of all of the Mohawk villages and food stores along the Mohawk River Valley. In 1667, the Mohawks agreed to a peace with the French whose explicit terms included a political alliance and religious proselytizing by Jesuit missionaries in the key Mohawk village rebuilt along the Mohawk River — Kahnawake.

Over the course of the next 50 years, the Mohawks, led by the chiefs and women from the group of families from the main Mohawk village at Kahnawake, migrated *en masse* to the Catholic religious community and re-established their village on the St. Lawrence River — renaming the new settlement in remembrance of their recent village to the south.

The character of the community began to change soon after the arrival of the Mohawks. Whereas it was originally a religious centre, the transfer of Mohawk people in such large numbers and the climate in which the move was initiated gave the community an entirely different orientation. The Mohawk language and culture came to dominate, and the community became immersed in Iroquois politics and diplomacy. Kahnawake became more of a military, diplomatic and trading centre than a religious retreat. As early as 1677, a gunsmith and a tavern were the main features of the gates to the village. By 1736, the majority of the population of the Mohawk Nation was re-established at Kahnawake and at the other French-allied Mohawk village that had been

established, Kanesatake. At this point in history, there were 1200 Mohawk at Kahnawake alone, with only 600 remaining in two villages along the Mohawk River.

iii. *The economic and political prosperity of the Mohawks*

Kahnawake Mohawks have always been intermediaries in the economies which emerged in the face of restrictions imposed by imperial or federal edicts as France and later England asserted sovereignty in the area. From furs to skilled labour, Kahnawake Mohawks have always stood on the principle of their sovereignty as a nation and their pre-existing and unsundered inherent rights and they ignored trade barriers, managing to prosper in supplying a demand within a Euro-American economy. The village was established to take advantage of a strategic location at the head of a key trade route between two Euro-American empires/states, and inter-state trade has always been and remains a key factor in the community's identity and in its vision of its sovereignty and future development.

This pattern was established long before Europeans appeared in the Mohawks' world. War and trade took the Mohawk from their villages to the rivers within a vast network for many hundreds of years. Their presence at both heads of the important trade route extending from present-day New York to Montreal along the Hudson River-Lake Champlain-Richelieu River channel was well established in the pre-contact era. When the European colonial empires came to dominate the area militarily, the Mohawks simply adapted their economic activity to reflect the need for intermediaries between the European newcomers.

The Mohawks at first took advantage of the Dutch willingness to supply them with arms to dominate as intermediaries between the interior Indian tribes and the Dutch settlement at Fort Orange (Albany). They then established a solid allegiance, fulfilling the same role with respect to

the British successors to the Dutch. Later, they extended their alliance to the French as well. The Mohawks sensed an opportunity to rise above dependency upon the fortunes of a single European ally and created a vital role for themselves between two of them, thus ensuring their autonomous existence. But the basis of the relationship always remained in the commercial role of the Mohawks located at Montreal and Albany.

iv. The economic and political decline of the Mohawks

The Mohawks of Kahnawake prospered politically and economically throughout the colonial period. Their sovereign status was recognized and affirmed in treaties with the French and British, and the Mohawks used their military and strategic importance to guarantee respect from the Europeans for their political and economic independence.

However, their economic power decreased along with the fur trade beginning in the 1820s. Compounding the economic shift, a final peace between the Euro-American empires was established in 1815, negating the Mohawks' military and diplomatic importance. As the Euro-Americans began to consolidate themselves politically and territorially, the presence of the Mohawk village outside Montreal went from being a strategic focal point to an economic and political liability for the governors of British North America.

The industrial age then struck with full force as commercial interests and the British governors disregarded the Mohawks' contributions in war, numerous treaties and inherent rights and expropriated large tracts of land for use in developing commercial railways and port facilities and as rights of way for transportation and electrical lines. In this era of political and economic disrespect, the Mohawks adapted to various degrees by continuing their military tradition, serving with the British military in overseas campaigns and with the Union Army in the United

States Civil War. They also engaged in a number of occupations that saw them integrate into the broader market economy, albeit in a manner reflecting their traditional mobility and sense of independence. Farming, crafts, river boat piloting and the entertainment industry were primary sources of employment during the latter half of the nineteenth century in Kahnawake. Into the twentieth century, the Mohawks came to specialize in high steel construction.

The decline in economic and political status of Kahnawake as a collectivity in relation to Euro-American powers began with the end of the fur trade and the War of 1812. The disregard by the British toward the end of the nineteenth century was compounded when Canada inherited the British legacy and embarked on its own effort to consolidate authority over the Indigenous nations located within its newly established borders. Declining economic independence due to increased European immigration, settler colonialism and the destruction of natural resources, combined with a consistent program of cultural and political assimilation by the Canadian government caused cultural and economic decline within the community, and Kahnawake faced an era of political division internally.

Canada gradually imposed its legislative and administrative regime upon the Mohawks. Powerless to resist these intrusions and restricted in their ability to migrate to other traditional territories, Kahnawake endured further impositions. The *Indian Act* system of government was officially established in 1890, the administration of successive Indian agents began in the 1930s and the imposition of federal authority was completed by the 1951 revisions to the *Indian Act* and the consolidation of the band council system of government.

Though a significant portion of the community appears to have been supportive of the *Indian Act* system, it is also evident that an equally significant part was opposed to it and supportive of

Kahnawake's "old rules" and the traditional council of chiefs which was in place in the years prior to the establishment of the *Indian Act*. This division was evident through the 1870s and 1880s and would continue to characterize the community after the band council system was formally requested by a number of community members in 1889.

Despite the imposition of Canadian authority, the Mohawks of Kahnawake continued to assert their rights as an independent people based upon their historical relationship with Canada's predecessor states. In many ways, the Mohawks sought to preserve their ties to the Iroquois tradition and to the larger idea of an Iroquois Confederacy. In the early 1920s, for example, a political victory for the Iroquois in the reaffirmation by United States Supreme Court of their cross-border mobility rights contributed to an expansion of the traditional longhouse religion and culture, which had been harboured among only a small minority of Kahnawake's families for decades.

Another traditional cultural resurgence ensued in the wake of a divisive conflict in 1947 over the character of Kahnawake's community government. In the federal debate surrounding the last major *Indian Act* reform, the people of Kahnawake were divided between those who wanted to move further toward a western-style representative government and those who favoured a traditional Iroquois-style government. The revised 1951 *Indian Act* eventually reinforced the ideals of one faction, but their victory alienated many other Mohawks and the conflict created opposing political blocs within the community. The axis of conflict became traditional versus band council and has remained the salient division within the community.

The opposing political blocs co-existed more or less without outward signs of hostility until the contemporary era. At the introduction of the band council system at the turn of the century, there

had been opposition to its implementation by significant numbers of Mohawk women, and opposition continued from various sectors within the community, usually based on a denial of the legitimacy of the institution perceived as an instrument of the federal government's plan to undermine the community. Yet there was reluctant acceptance of the utility of the band council as a means of relating with the federal government and later as a channel for federal funding to the community. Only recently has the denial of legitimacy overridden practical considerations and led a majority in Kahnawake to challenge the wisdom of accepting the existence of a federally mandated and nominally authoritative government institution. This development follows in the wake of the most important event in the modern history of Kahnawake: the coming of the St. Lawrence Seaway.

v. *The St. Lawrence Seaway*

A century of federal expropriations in Kahnawake culminated in the 1940s and 1950s as the community faced its most serious threat to its land base. During this period, the federal government began to implement a plan to construct a channel to bypass the shallow rapids common along the length of the St. Lawrence River from Montreal to the Great Lakes. Previously unnavigable, the St. Lawrence would be made to accommodate seagoing vessels and facilitate freight transport and trade between the United States and Canada. Kahnawake lay in the path its designers had drawn for the Seaway. The band council vehemently protested the further expropriation of Mohawk territory in the interests of Canadian commercial development. However, its leadership ultimately failed to prevent the seizure and forced relocation, by orders-in-council, of hundreds of Kahnawake Mohawks.

The legal challenges and public appeals launched by the band council failed to gain for Kahnawake adequate compensation for the lands taken for Seaway construction. The federal government ignored its trust responsibility to protect the land and rights of the Mohawks of Kahnawake. Where before the Seaway, a minority of traditionalist Mohawks had turned their back on the idea of cooperating with Canada, after the Seaway most Mohawks turned against the view of seeking to protect their lands and rights within the framework of Canadian law and institutions.

The Seaway was not the only factor in causing the Mohawk public to reject the idea and legitimacy of Canada and Canadian institutions; there were many other subsequent policy failures on issues as diverse as policing, land management and membership that caused an almost complete rupture in the Canada-Kahnawake relationship. However, the physical impact and timing of the Seaway make it the common reference point for the movement that has swept Kahnawake's politics and culture since.

Kahnawake has embarked on a process of recreating its links to a traditional Iroquois past — not only in a spiritual or cultural sense, but in politics and philosophy as well. Beginning in the 1960s, having been shown the disregard Canada displayed for the Mohawk people, Kahnawake turned inward for its source of strength and legitimacy. What has occurred since is very much a resurgence in the political culture of the Mohawks' ancestors.

Political and Cultural Resurgence in Kahnawake

The resurgence of the traditional ideology has many facets: the re-assertion of rights based on historical precedent and the *Kaienerekowa*; the rise of militancy in the 1980s as a reflection of the frustration felt by Mohawks with the intransigence of the government of Canada; the

resurrection of a traditional trade economy located in Iroquois country as evidence of national rights based on the concept of the *Kahswentha* predating and superseding Canadian laws; the band council's disavowal of its own legitimacy and commitment to the re-establishment of a traditional form of government. All of these represent different aspects of a single phenomenon: Kahnawake's emergence from political disarray and colonization to an assertive sense of nationhood embodied institutionally and in the identity of the people of Kahnawake. The character of Kahnawake – and of Kahnawakero:non as individuals, has emerged and been focused into a powerful ideology and strategic vision. Independence of thought, a steadfast defence of their distinctiveness, and a pervasive aggressiveness have become core values in Kahnawake. This has left the community troubled in some senses because of the push back these values engender from Canadians, but at the same time it has created a culture and dominant identity in the community that makes Kahnawake Mohawks uniquely qualified to assume a leadership role in challenging the stasis that has become the defining feature of settler colonialism, and the unjust relationship between Indigenous nations and the settler states of North America.

Kahnawake has with clear vision and bold action moved decisively to implement its objective of creating government structures that are locally controlled, democratic and in accord with their political and cultural traditions. The strategy employed by the community's leaders has been to fashion institutions that are first and foremost responsive to the needs of the Mohawk people and responsible to the community as a whole. Externally imposed *Indian Act* structures and government programs have no legitimacy among the Mohawks of Kahnawake. Thus only when it has been beneficial in terms of financing or administering an institution's activities have newly created institutions of Mohawk government been linked to existing *Indian Act* structures.

Otherwise, where the *Indian Act* denies Mohawk jurisdiction, or where existing policies and structures are insufficient, the new institutions are established by collective consent — ignoring the *Indian Act* and based instead on the innate right of the Mohawk people to govern themselves.

Various institutions have been created covering a wide range of areas. These structures are in reality at the base of Kahnawake's assertion of self-government; they are the practical means of creating a structural framework upon which a self-sufficient community is being reconstructed. Kahnawake has supplanted externally imposed institutions in a number of important jurisdictional areas, including health and social welfare, culture and education, justice and security, and economy and finances. Virtually all the institutions have been created under the legal authority of the MCK.

It is important to note that the MCK claims the collective will of the people of Kahnawake as its source of authority and legitimacy. On principle, it rejects the legal status of the *Indian Act* as its source of authority. Thus conceived, the majority of Kahnawake Mohawks consider the MCK to be the legitimate (either explicitly or tacitly) governing authority in the community. This fact has much to do with the efforts the MCK has made to distance itself from the *Indian Act* and establish an independent source of legitimacy through community based institutional development. The MCK has been largely successful in shifting the focus of its legitimacy from Ottawa to Kahnawake. The MCK at present is an elected and representative body that is accountable, together with the subsidiary and ancillary organizations and institutions it has created, to the community. Contemporary governance in Kahnawake is the actualization of the Mohawks of Kahnawake exercising their nationhood (as they have done historically through treaties of peace and friendship and trade), their right to self-government as a sovereign people,

through multiple institutions of government which include the Longhouses and the MCK's organizational structure.

At a band council meeting of August 13, 1971, it was mentioned that the plan was to phase-out the Department of Indian Affairs and to develop the reserve economically and “make every effort to have ownership of reserve lands invested in the Indian peoples rather than the government or the Queen, thereby eliminating the threat of expropriation through the present status under the Indian Act.” This showed even then the commitment of the band councilors at the time to restore the autonomy of governance and to self-govern without external influence. In the community at the time, economic development was seen as the way to make it possible to fund the reserve's actions and needs without money from the government, thereby eliminating the role of the DIA. The idea of ownership of lands was to protect against another Seaway incident and to make sure that the land remained where it belonged, in the hands of the people collectively.

A major step towards self-determination came in 1974 when the band council officially became the *Mohawk Council of Kahnawà:ke*. Though it may not seem that important as it is only a name for an already existing government entity, it represents a further small act of sovereignty and self-determination.

Opposition to assumed Canadian authority continued to grow throughout the 1970s. In 1979, the band council (now called the Mohawk Council of Kahnawà:ke) passed a resolution rejecting Bill 101, Quebec's language law, saying that it had no force on Indigenous people living both on and off the reserve. This is yet another instance of the Mohawk Council of Kahnawà:ke asserting sovereignty. Rejecting legislation passed by external governments demonstrates that Kahnawake

is committed to restoring itself as a fully independent community with its own rights and customs, and not subject to the rights and customs of other peoples.

A further important step towards the re-assertion of sovereignty by the Mohawks of Kahnawake was taken in April, 1982 when the MCK declared that the chief and council would “take immediate action to transition from the Indian Act elective system to the Aboriginal form of government which is the Six Nations Iroquois Confederacy.” With this, we see that the vision of Kahnawake Mohawks is not only for political and administrative self-government, but rather for self-determination and the reestablishment of a nation-to-nation relationship with Canada: sovereignty.

The MCK is not accepted as the legitimate governing institution by a significant number of Mohawks because of their philosophical opposition to the type of linkages created by the council's reliance upon federal transfer payments and the still-in-force formal legal authority of the *Indian Act*. The non-supporters, primarily Mohawks who have reoriented their political beliefs to reflect traditionalism, find voice and political representation in one of the longhouse structures existing within the community. In contrast to the MCK, the longhouses are guided exclusively by the principles laid out in the *Kaienerekowa*. Although there is agreement among the longhouses that the Great Law of Peace is the sole legitimate constitution and body of law for Mohawk people, there remains some disparity in the interpretation of the Law. This disparity of opinion with regard to the application of the Law in the contemporary era and the recreation of formal structures of governance accounts for the existence of different longhouses.

As a consequence of this co-existence of Kahnawake's two political orientations, there is competition between them for legitimacy and authority within the community. Nevertheless,

there have been discussions regarding the merger of these structures in the past, the objective being to break from financial dependence on the Canadian government and the ensuing emergence of an inclusive and independent form of Mohawk sovereign government.

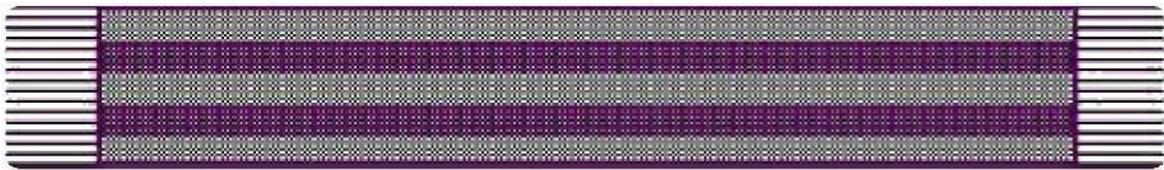
The activation of the community's sovereign right through the development of a capacity for the exercise of autonomous authority has been taking place for some time. The institutions in Kahnawake reflect the transition from living under the restrictive control of the *Indian Act* to a democratic, albeit limited, form of self-government, through creatively assessing and addressing the needs of the community and making real efforts to include a broad cross-section of community members in the process.

The Kahnawake Mohawk understanding of the Indigenous-Settler relationship reflects the basic premises of the *Kaswentha*, the Two Row Wampum. To reiterate the earlier description above, the central idea of the Two Row Wampum is that Indigenous nations and the people of the Settler society form two independent yet interdependent political communities with the twin mutual responsibilities of respect and non-interference. This understanding is the basis upon which the Mohawks agreed to relate to European newcomers in the first instance, and it is the basic premise woven into all subsequent relationships and treaties. The recognition of the responsibility to govern one's internal affairs and the manifested respect for the other's responsibility to do so is the first principle of self-determination in the Iroquois perspective, and it is in fact the foundation of the Indigenous-Settler relationships at the foundation of Canada.

The foundational understanding between Indigenous and Settler peoples reflected in the Two Row Wampum was recoded with belt of shells made of the quahog clam. The belt was made with a background of white wampum beads with two rows of purple that run parallel from one

end to the other. The words that go with the explanation of the Two Row Wampum remind us of the relationship originally struck between the original and newcomer peoples that allowed Europeans to settle and establish themselves on this continent. The background of white beads represents a river and the two parallel rows of purple beads represent two boats, one for the Iroquois and one for the newcomers, traveling down the river, which is wide enough for the two vessels to travel down together without any problems. It is said that each vessel carries not only the people but the laws, traditions, customs, languages, and spiritual beliefs of each nation; in effect, two sovereignties. The two separate rows of purple beads symbolize and express the spirits of Iroquois and Settler people and their ancestors for all time. Between the two rows of purple beads, there are three rows of white beads representing the friendship, peace and respect between peoples.

In this view of the relationship, the people in each boat must be careful to steer their vessel on a straight course, and it was a solemn commitment that neither party would interfere with the lives of the other one by trying to impose their ways or laws on the other. This is the foundational document of all political sovereignties in this part of North America.



Mohawks believe that they must work to promote the ideal of harmonious co-existence as a core element in the relationship between Canada and Kahnawake based on the ideals of the Two Row Wampum – and there has been great consistency in principle and action by Mohawks and the other Iroquois nations in defending this philosophical commitment. The Mohawks of

Kahnawake, as with other Iroquois nations, have used the principles embodied in the Two Row Wampum as the initial guide or set of rules for relations between themselves and all other nations. They have been careful to abide by the concept that was developed and each succeeding generation of Mohawks is explicitly taught the importance of maintaining the principles of the Two Row Wampum and of enacting them in their lives.

Collectively, Kahnawake Mohawks have always implemented the principle of the Kahswentha in their relationships with new neighbouring sovereignties. There is no difference, in this respect, between their position on relations with the Dutch in the 16th century, the English in the 17th century, the French in the 18th century, the British in the 19th century, or Canada in the 20th and 21st centuries. From ancient times to the present, the Kahnawake Mohawks have held firm to their autonomous nationhood, and have sought to exercise their authority in relation to other Indigenous nations and to the settler colonial states based on the principle of the Two Row Wampum and the tenacious defence of their independence and unceded inherent sovereign nationhood.

The expression of this consistent adherence to autonomous nationhood has evolved over time. In the early period of European settlement in the region, from 1624 through to the Great Peace of Montreal in 1701, Kahnawake Mohawks were recognized as a distinct sovereign nation in at least fourteen treaties of peace and friendship and trade treaties with the French. In the colonial period, Kahnawake Mohawks were recognized as a distinct sovereign nation in at least nine treaties of alliance and trade with the British and French. Well into the 1930s, the British crown was still advocating on behalf of the Kahnawake Mohawks with respect to New York State's failure to adhere to the terms of 18th century nation-to-nation treaties with Kahnawake in relation to annuities due in compensation for the seizure of Mohawk territory within the boundaries of

the United States. All of this demonstrates – and Appendix A illustrates in detail - that the Mohawks of Kahnawake have an unbroken assertion of an independent political existence going all the way back to the first encounter with Europeans in their territories.

There is no record of the Mohawks of Kahnawake ever surrendering their sovereignty nor to the existence of any instrument of legal surrender of their independent political existence. On the contrary, the Mohawks of Kahnawake have consistently asserted their inherent autonomous nationhood principally and effectively, whenever and to the fullest extent possible.

For Kahnawake Mohawks, existing within Canada is a result of colonialism and the usurpation of their rights by a foreign power. Working within the legal and political construct of “Canada” to do what is necessary to maintain their community in the face of injustices and forced impositions of authority implies no derogation of sovereignty or denial of nationhood. Pragmatically accepting the evident reality of a continuing relationship with the colonial reality of Canada has not led to an internalization or validation of the idea of Canada as a legitimate entity among Mohawks. There has been no supplanting of Kahnawake's sovereignty by being forced to participate in an imposed administrative association with Canadian authorities. Again, Kahnawake Mohawks have never explicitly consented to a surrender of land or any other aspect of their sovereignty.

The Concept and Meaning of Sovereignty in Kahnawake

In Kahnawake, Indigenous self-determination means working toward the ideal of complete autonomy and the realization of the Mohawk right to live by their own laws in their own lands. The term “self-government” as it is understood in Canadian political discourse today is unacceptable as an ultimate objective for the Mohawks of Kahnawake. Any conceptualization of

a relationship between Mohawks and other peoples that denies the rights of the Mohawk Nation in the interests of securing the power and authority of another nation will not be tolerated. Mohawks see the consideration of self-government arrangements as part of the inevitable process of divesting themselves of colonial status and regaining the status of an independent sovereign nation. Thus, self-government simply means regaining control over the processes and powers of governance as an interim measure to the eventual objective of autonomy.

Sovereignty as a term does not capture the essence of the Mohawk understanding of their nationhood - it is skewed in favour of the Western notion of authority and governing relationships with people and the land. Using English, the term is the closest approximation to the Mohawk concept and it does provide a conceptual framework for understanding the goals and strategies within Indigenous communities and Kahnawake in particular where the conventional use of the term “sovereignty” has taken on a new and Indigenized reformulation. While the English word is maintained, the content of the definition is being replaced by Mohawk ideas, with the objective of moving beyond “sovereignty” as just the closest approximation of an Indigenous idea. The Indigenous idea itself is being expressed, and “sovereignty” is being redefined in the process. Sovereignty for the Mohawks of Kahnawake is only truly represented in *Kanien'keha*, the Mohawk language.

There is a strong sense of self-sufficiency and independence in the political understanding of sovereignty among Kahnawake Mohawks. For Mohawks, sovereignty is conceived of not only in terms of interests and boundaries and authorities, but in terms of land, relationships and spirituality on the collective and individual levels of existence.

Locating the Mohawk definition of sovereignty in this context, it is easier to understand what it means for people in Kahnawake as a principle for thought and action. The idea of balance among people and communities is pervasive in Mohawk culture and spirituality; the achievement of a balanced relationship based upon respect for differences, whether among individuals or communities, is valued as the achievement of a harmonious ideal state of affairs.

The essence of Mohawk sovereignty is harmony. Through its linkage to the idea of responsibility to ensure that the nation is protected in the present and generationally in a way that is inherent to *Kaienerekowa*, the concept is endowed with a spiritual power that precludes the compromise of the ideal in the interests of political expediency or power calculations. A balanced and respectful relationship among each other (the people), between the Mohawk people and the earth (land), and between the Mohawk people and other communities forms the ideal represented in the Mohawk use of the term “sovereignty”.

There is a keen sense history in Kahnawake, and most Mohawks are aware of the path their community has taken, from autonomous nationhood to wardship under Canadian institutions. This history reflects consistent rebuttals of their attempts to operationalize the ideal of harmonious co-existence within the framework of the Canada-Kahnawake relationship. Canadians are also aware of the history of the relationship between Indigenous and non-Indigenous societies, but where the majority of Canadians wish to see Indigenous societies integrated within the social and political framework they have created, Mohawks reject the idea of buying into what are to them foreign institutions. They have recognized the political realities and the necessity of co-operating with Canadian authorities to create institutions and arrangements that will afford the community control over its internal organization, expanded

jurisdictional powers and more flexible external relationships. Canadians perceive these as ultimate objectives; Mohawks do not.

Self-government as a long-term goal in Kahnawake is based explicitly on traditional concepts reflected in its political culture. In the short and mid-term as well, the principles contained in the *Kaienerekowa* and *Kahswentha* are implemented as much as possible. The common element on the continuum from short- to long-term goals is maintenance of a position of sovereignty. Whether agreeing to a funding arrangement to build a hospital in 1985, entering into formal community-based self-government negotiations in 1991, or the major expansion of community-based organizations to self-govern in the community during the 1990s and 2000s, Mohawks have consistently maintained that their efforts to improve life in Kahnawake should in no way be interpreted as accession to Canadian sovereign claims or consent to the legitimacy of Canadian institutions.

In the effort to build lasting respect, the major obstacle Mohawks and Canadians face is essentially conceptual: they hold radically different ideas of Canada. Conceptually, Canada may be a nation, or it may be a political framework for co-operation between nations. For most Canadians it is both. For most Mohawks it is at best only the latter. The people of Kahnawake have allegiance solely to the Mohawk Nation and their view of the Mohawk Nation is one in the fullest sense of the term as it is used in international law.

The political problem of colonialism and its legacy in structuring the relationship between Mohawks and Canada has become clear through the era of Mohawk assertions and Canadian denials and the jurisdictional and at times violent conflicts that have resulted. Collectively and individually Kahnawake Mohawks have proven over time that they believe in their own

nationhood and sovereign authority so deeply, that the community's political independence is an essential part of the fabric of being Kahnawake Mohawk, that they cannot and will not cease in their pursuit of justice for their nation through the recognition of their collective rights.

With this fact well established within the community, Kahnawake is limited in how far it can proceed in a partnership with Canada. In this era of reconciliation, Canadian policy is to seek to bring Mohawks as full members into the state they have created, while Kahnawake Mohawks must as citizens of the Mohawk Nation resist the attempt to erode their Mohawk institutions and identity.

From the Mohawk perspective the problem is a lack of respect for the sovereignty of the Mohawk nation. They hope for a partnership with Canada that recognizes the limits of their alliance rooted in their political philosophy, while still allowing both Canadians and Mohawks to benefit from the association. Again, from the Mohawk perspective, there is plenty of room for manoeuvre in the Canada-Kahnawake relationship without compromising Mohawk sovereignty. Kahnawake as a community of the Mohawk Nation is vested with considerable local autonomy. This allows for substantial progress toward what may be termed self-government: enhanced local control and cooperation in the administration of the institutions that affect life in Kahnawake, without prejudice to larger issues of sovereignty and broader political associations. This short- and mid-term progress would then feed into an expanded conception of self-government in the long term that would respect Mohawk national sovereignty and the right to self-determination. The expanded concept would not necessarily preclude further cooperation between Canada and the Mohawks. It may in fact promote co-operation by forcing a negotiated power-sharing agreement and mutual recognition of jurisdictional control and delegated responsibility. This is the only foreseeable reconciliation of the injustice of colonialism in the Mohawk perspective.

Mohawk Governance and the Tobacco Trade in Kahnawake

In the contemporary assertion of Mohawk nationhood, since the 1980s, the trade in and sale of tobacco products has been a major engine for the economic and political development of the community. It is not in the purview of this paper to describe the nature or dynamics of the trade. Instead the trade's relation to the long term project of restoring the nationhood and asserting the sovereignty of the Kahnawake Mohawks has been considered.

The most important point to on this question is that Canadian jurisdictional authorities have tacitly and, in some cases, explicitly recognized the exercise of sovereign authority by Mohawks that the trade represents. In this sense, the tobacco trade can be seen as another contemporary expression of the contentious assertion of nationhood by Kahnawake Mohawks that challenges Canadian law and authority in their territory – a justified act of resistance to colonial controls and forced dependency which is in a direct line of connection with ancestral assertions of authority and autonomy at Kahnawake all the way through the 1600s.

As it stands today, the trade functions independently and autonomously within the broad framework of the society, politics and culture of Kahnawake – there is deep support and involvement by most Kahnawake Mohawk, but there is no institutional authority effectively governing the tobacco trade in Kahnawake. There have been efforts to establish a tobacco law and regulatory bodies within the community based on the inherent authority of the community in the past, including:

- MCK – KTA (Kahnawake Tobacco Association) MOU in August of 2014
- Iroquois Caucus (coordinating body of Iroquois band councils) “Tobacco Planning Council” formed in Dec 2014

- Kahnawake Tobacco Law – proposed in June 2016 (in progress)

In the absence of formal organization of the trade and regulation by Kahnawake authorities, individuals involved in the tobacco trade have engaged with outside authorities on their own terms and using their own strategies and resources. It is clear that the tobacco trade is widely supported in the community as an economy – one that creates employment which promotes freedom from dependency on the part of individual Mohawks. More importantly, and in relation to the larger question of sovereignty, the tobacco trade holds a significant place historically in the minds of Mohawks as an important form of assertion of independent action based on the principle of Mohawk sovereignty. Its continuing existence is seen as evidence of the creation and maintenance of a sovereign political space in Kahnawake. The vast majority of Kahnawake support the trade and have benefitted from it in some form or another, and all political groups understand and appreciate its importance both as an act of defiance of Canadian claims to sovereign authority in Mohawk territory and as an expression of their community's capacity to organize and maintain itself independently.

APPENDIX A – Chronology of various Kahnawake Mohawk Assertions of Sovereignty

- 1624: Treaty of Trade between Iroquois and New France
- 1633: Treaty for Trade between Iroquois and French
- 1645: Treaty at Three Rivers between Mohawks and French
- 1653: Treaty at Montreal between French and Iroquois Confederacy nations
- 1659: Treaty at the First Mohawk Castle (Kahnawake) between Mohawks and Dutch
- 1665: Treaty at Québec, between New France and Iroquois Confederacy nations
- 1666: Treaty of Peace made between the Iroquois and the French
- 1667: Treaty at Montreal between French and Iroquois Confederacy nations
- 1673: Treaty at Québec, between French and Iroquois Confederacy nations
- 1680: King Louis XIV granted the Kahnawake Mohawk the Seigneurie de Sault Saint-Louis
- 1688: Treaty at Montreal between Iroquois Confederacy and French regarding neutrality
- 1692: Kahnawake treaty with French.
- 1700: Treaty at Montreal between all Iroquois Confederacy and Kahnawake.
- 1701: Great Peace of Montreal, with Kahnawake as signatory.
- 1717: The Hurons send a belt (request treaty) to Kahnawake to seek reconciliation.
- 1735: Kahnawake treaty with New York Commissioners of Indian Affairs to renew peace and friendship with New York and the Iroquois Confederacy.
- 1751: French Governor General La Jonquiere treats with the Kahnawake and Kanehsatake.
- 1753: Treaty at Carlisle, Pennsylvania, between Kahnawake and other Six Nations with United States Indian Affairs Commissioner, Benjamin Franklin, on the regulation of trade.

1760: Treaty of Kahnawà:ke – Seven Nations of Canada neutrality agreed to on 18 August at Fort Lévis and terms of a formal alliance negotiated on 15/16 September at Kahnawà:ke.

1760: Treaty of Oswegatchie at Kahnawake and declaration of unity of all Six Nations communities with Kahnawake.

1764 (August): The English at Fort Niagara calls for a peace council attended by the Kahnawake Mohawks and nine other Indigenous nations.

1764: Colonel Henri Bouquet treated with Kahnawake, Seneca Nation and others.

1796: Kahnawake as part of the 7 Nations enters the Treaty of Seven Nations of Canada as a beneficiary and to safeguard lands in New York at Akwesáhsne, for Mohawks and allies. Kahnawake annuity arises from this treaty authorized by George Washington.

1797: Treaty between Kahnawake Mohawks and Loyalist Mohawks (Six Nations, and Tyendinaga) and the United States settling conflicting claims to land.

1969: Control over policing obtained by Kahnawake band council.

1972: MCK obtains administrative control over membership.

1974: Kahnawa'kero:non take back lands in New York and establish a settlement at Kanienke and continue to maintain the on-going settlement of mainly Kahnawake persons.

1978: Kahnawake joins with Mohawk Council of Akwesáhsne to press the NY land claims under the 1796 Treaty.

1979: Shooting death of David Cross by the SQ leads to exclusion of SQ from territory. Kahnawake community members mandate a return to Traditional Government.

1981: MCK places a Moratorium on mixed marriages and adoption of non-Indians.

1988: Kahnawake issues notice to surrounding municipalities of ownership of the SSSL lands

1988: Kahnawake raided by RCMP and five community members are arrested, and monies and tobacco are seized from the blue buildings. Kahnawake members react by closing off the highway leading to Mercier Bridge.

1990: Kahnawake acts to support the sister community of Kanehsata:ke by a blockade of the Mercier Bridge. The ensuing “Oka Crisis” leads to the occupation of the territory of Kahnawà:ke and Kahnesata:ke by the Canadian Army.

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