

## REQUEST FOR ARBITRATION

A Kahnawá:ke Arbitration Panel (hereinafter the Panel) has been petitioned, pursuant to **Section 80** of the **Kahnawá:ke Communal Law on Alcoholic Beverages** (27 Kentenhkó:wa/November 1995), to review the decision of the Kahnawá:ke Alcoholic Beverages Control Board, (hereinafter the ABC Board) denying Snake's Poker Club a Kahnawá:ke Alcoholic Beverages Control Permit.

The procedure to select the Arbitrators was carried out in accordance with the **Kahnawá:ke Communal Arbitration Procedure**, which is contained in MCR # 13 1989/90, enacted by the Mohawk Council of Kahnawá:ke (hereinafter MCK) on 5 Enníska/February 1990.

The petition for Arbitration was received at the Court of Kahnawá:ke on February 19, 2009, from Mr. Benjamin McComber and Mr. Stanley Myiow, proprietors of Snake's Poker Club (hereinafter Snake's), in relation to the denial of an Alcoholic Beverages Control Permit (hereinafter an ABC Permit) by the ABC Board.

The Panel's mandate was to review the process used by the ABC Board to arrive at their decision. The Panel is **not** mandated to answer the larger questions of; whether any establishment in Kahnawá:ke may or may not sell alcohol; or, to decide on the ill effects of alcohol on the Community of Kahnawá:ke. Therefore, the sole question before the Panel is whether Snake's was subject to a fair and objective process, in accordance with the Law, in its request for an ABC Permit to sell alcohol.

The Panel reviewed the facts, procedural process and practices revealed through testimony and documentation provided by the participants, from September 3, 2009 to January 20, 2010.

The following individuals were participants in the proceedings;

Stanley Myiow – proprietor, Snake's Poker Club

Benjamin McComber – proprietor, Snake's Poker Club

Lionel Jacobs – Chairperson, ABC Board

Mark Goodleaf – Vice – Chairperson, ABC Board

Arnold Boyer – ABC Board Member

Georgina Bush – ABC Board Member

Larry Jacobs – ABC Board Member

Trina Skye – ABC Board Member

Rita Thomas – ABC Board Member

Courtney Bourgeois – ABC Administrative Assistant (current)

Lisa Delormier – ABC Administrative Assistant (on leave)

The Panel reached its decision by examining two sources:

1 – **Kahnawá:ke Communal Law on Alcoholic Beverages** (hereinafter **ABC Law**) enacted by the Mohawk Council of Kahnawá:ke MCR 80/1995/96, on 27 Kentenhkó:wa/November 1995, which grants the ABC Board;

- a) its authority, and;
- b) regulatory powers.

2 – **The Principles of Natural Justice and Procedural Fairness**, which include;

- a) Due process, whereby the process used is to be fair, objective, transparent and complete;
- b) a fair hearing, whereby the applicant(s) is provided the opportunity to present their position;
- c) whether there was bias on the part of any Board Member in relation to the decision, and;
- d) whether sufficient reasoning, in regards to the decision, was provided to the applicant.

### **DUE PROCESS**

Due Process requires a fair, objective, reasonable, transparent and unbiased process. In this case, the ABC Board has the mandate, under the **ABC Law**, to issue or deny ABC permits. The parameters of the ABC Board's decision-making powers, to issue or deny, are also set out in the **ABC Law**. The ABC Board has discretion in their decision-making powers, however, this discretion is not unfettered, and it is limited by the **ABC Law**. The **ABC Law** requires that the ABC Board make its decisions based on particular criteria, as set out in **Sections 113** and **114**. It requires the ABC Board to post a public notice of the permit application under **Section 118**. As well, it requires the ABC Board to enact Regulations, as set out in **Sections 75 (d)** and **172**, in relation to their process of discretionary decision-making.

The criteria, as set out in **Sections 113** and **114** of the **ABC Law**, are as follows:

**Section 113**

- that the Applicant has to be at least twenty-one (21) years old;
- be the owner of the establishment, or, have the owner's authorization;
- arrange the establishment in accordance with standards required by the **ABC Law**, or, any other Kahnawá:ke Law;
- pay the required administrative fees;
- be a Mohawk person.

**Section 114**

- provide a written application form, including name, birth date, social insurance number, address and phone number;
- provide proof that the conditions in **Section 113** are met;
- indicate where the establishment is located and provide a photograph or video of the location;
- provide proof of fire inspection;
- provide proof of liability insurance;
- provide a sanitation certificate; and,
- provide any information regarding convictions of indictable offences.

As confirmed by the testimony of the ABC Board Members, Snake's had met all of the requirements set out in **Sections 113** and **114** of the **ABC Law**. Snake's owners testified that they wanted to follow all of the requirements as set out in Kahnawá:ke Law. Mr. Myiow added that Snake's has a Gaming Permit issued by the Kahnawá:ke Gaming Commission.

The requirement of publicly posting an ABC Permit application is set out as follows:

**Section 118**

- on receipt of a Permit application the Board must post a public notice advising the Community of the application; and,
- allow ten (10) days for input from any interested person.

As confirmed by the testimony of the ABC Board Members, there was never a public posting of the application. The ABC Board Chair testified that because the category of Gaming/Poker did not exist on the Permit Application form they did not feel the need to post and process Snake's application. However, the actual application form submitted by Mr. McComber, dated March 17, 2008, has the two (2) categories of Bar Permit and Restaurant Permit checked off. On the same page the word "poker" is

handwritten with a question mark and line next to it. As learned through the testimony of Lisa Delormier, ABC Administrative Assistant at the time the application was submitted, she is the person who handwrote it, not Mr. McComber or Mr. Myiow. Snake's owners testified that they were applying for either a Restaurant or a Bar Permit and that Ms. Delormier suggested adding the handwritten word "poker". Ms. Delormier testified that she suggested the word "poker" stating that the ABC Board may accept to consider this area.

Regardless of the handwritten word "poker", which is neither a category the owners applied for, nor is it checked off, the owners applied specifically for a Restaurant or a Bar Permit. Based on this, the ABC Board should have handled the application as it would any other application for a Restaurant or Bar Permit. If the handwritten word "poker" was an issue, the ABC Board should have held a hearing and could have asked at that point who was responsible for writing the word and why.

The Regulatory powers of the ABC Board, as set out in Sections 75 (d) and 172 of the ABC Law, are as follows;

**Section 75**

The Board shall exercise functions which include;

**(d)** enacting and administering all Regulations contemplated by this Law.

**Section 172**

The Board shall make Regulations;

- (a)** determining the amount of the administrative costs that are payable under this Law;
- (b)** prescribing, particularly in respect of the surface area, lighting and furnishings, and standards of arrangement applicable to establishments and their rooms and terrace for the purposes of fire safety and sanitation;
- (c)** prescribing the standards it must apply to fix the numbers of persons who may be admitted at one time to an establishment or to a room or a terrace thereof;
- (d)** determining the pricing of Alcoholic Beverages;
- (e)** determining the form and content of notices and price lists;
- (f)** determining the form and content of the application and renewal forms it may require from a permit holder;
- (g)** prohibiting or governing the granting of an advantage calculated to encourage the sale of Alcoholic Beverages;

- (h) determining the manner in which Alcoholic Beverages may be manufactured in the Territory;
- (i) drafting a code ethics for Board Members;
- (j) governing the internal management of the Board;
- (k) limiting the number of each type of Permit that may be held in the Territory;
- (l) limiting the days and times permit holders may open their establishments;
- (m) providing for separate areas within the establishments for families with minor children;
- (n) providing rules of operation for the storage facility housing articles seized under this Law;
- (o) developing a process by which the Board will conduct hearings;
- (p) determining the procedure applicable before it;
- (q) providing any other measures useful to the application of this Law.

According to the testimony of the ABC Board, there has only been one Regulation ever enacted by the ABC Board. The Regulation is the *Kahnawá:ke Regulation for the Manufacturing and Sale of Wine and Wine Related Products*, (enacted July 11, 2005). This Regulation is related to wine only and has no bearing on the ABC Board's decision, and process used, to grant or deny an ABC Permit in this particular case.

In interviewing the ABC Board Members, all had varying interpretations regarding the process the ABC Board is required to use in granting or denying ABC permits. The Board Members had varying responses on what the exact procedure is for processing an application. A few stated that an application is automatically posted in the Eastern Door. One stated that a visit to the establishment is always done, except in this case, since "no category existed for gaming". As well, there were varying responses regarding who writes and signs refusal letters. With regards to the actual application made by Snake's and the refusal letter sent by the Board, many of the Board Members testified that they never actually saw either until this Arbitration Hearing.

At the Hearing held by this Panel, the Board and their Administrative Assistant were asked who wrote the refusal letter to Snake's and who signed it. The Panel received different answers from each Member. Some thought the whole Board discussed it at a meeting and then it was drafted up. Others believed it was just the Chairperson who wrote it and signed it. The Administrative Assistant, Courtney Bourgeois, testified that if there is a refusal letter "she composes the letter" and "then forwards it to the Chair, Vice-Chair or a Board Member" to sign. The Chairperson, Lionel Jacobs, testified that he and Courtney drafted the letter and he signed on behalf of the Board.

The *ABC Law* sets out parameters. Under this Law, the Board is required to draft Regulations, in relation to the process used by the Board in arriving at its decisions regarding ABC permits, as set out in *Sections 75 (d)* and *172*. Through these Regulations the Board can decide if it is going to limit the number of a

type or category of permit, determine pricing, and limit days and times for the sale of alcohol within the establishments. More specifically the Board is given the ability, through Regulations, to develop a process by which it will conduct hearings; determine the procedure applicable before it; and be provided any other measure useful to the application of the ABC Law.

Codifying Regulations is necessary to set out clear expectations for the Board, applicants, and the Community. As stated previously, the ABC Board has discretion in its decision-making; however, the Board has to be responsible and accountable in its decision-making. The Board, through Regulations, should specifically set out factors and/or limitations. It should not arbitrarily decide whether to issue or deny an ABC Permit without first providing information. For example, the Board in its decision-making cannot simply decide to limit the number of a type of permit without some stipulations, rationale and communication, especially to the public at large.

The ABC Board Members testified that they denied Snake's an ABC Permit because there is no category for Gaming/Poker. The ABC Board's mandate is to make decisions based solely on the ABC Law, not any other source. In this case, the ABC Permits applied for are categories which exist in the ABC Law and on the application form, namely Restaurant and Bar Permits. As such, the ABC Permit application submitted by Snake's owners should have been processed as any other application made for a Restaurant or Bar Permit. The ABC Board has stated in testimony and evidence that it was willing and is open to offering a Restaurant, and possibly later a Bar Permit.

According to the ABC Board Minutes of January 28, 2008, the former ABC Board Members decided they wanted the Community's input "with regard to gaming houses" and ABC Permits. The former Board received a letter from Snake's dated, February 5, 2008. In this letter Mr. Myiow let it be known that he intended to apply for an ABC Permit. The formal application, submitted by Snake's owners, was dated, March 17, 2008. It wasn't until after a new Board was elected that the ABC Board responded to the application request, on August 13, 2008, in a refusal letter. At no time did the former Board, or the present Board, inform Snake's owners of their desire for Community input. There was no letter to the applicants stating that the ABC Board was putting a hold on requests for Permits from Gaming Houses, until they gauged how the Community wanted to proceed. There was also no public notification letting the Community at large know of the ABC Board's intentions.

As part of Due Process, an Administrative body, such as the ABC Board, must let its intentions be known to the entire Community, especially Community Members who are applying for Permits. When an applicant spends time, money and energy in setting up their business, and follows all of the

requirements set out in a Law, they have reasonable expectations with regards to how their application will be handled.

The reasonable expectation of an applicant is, 'If I have met all of the requirements of the Law, and no limitations have been made public, then I should be able to obtain the Permit'. If the Permit is refused solely on the Board's discretion and not on the Law or Regulations then there is a problem. The Board has discretion, but with that discretion there is a duty to publicly state what will cause a Permit application to be refused and the refusal has to stem from something in the Law.

The ABC Board recognized that Regulations were required. On at least three occasions they stated that they would have to draw up Regulations. First, in the ABC Board Minutes of August 12, 2008, the Board "...decided that they will not grant Poker/Gaming Rooms with Liquor licenses. No Permits in Poker Rooms. Board spoke of alternatives for these rooms, and will begin to set guidelines and regulations." However, the reasons for their decision are not stated in those Minutes and they failed to inform the applicants that they would be drawing up "guidelines and regulations" for these types of "rooms" in their refusal letter, dated August 13, 2008.

Second, the Chairperson, Lionel Jacobs, stated in the MCK minutes of March 2, 2009, at 11:04:18 A.M., that "they (the ABC Board) would have to have Regulations drawn up. They do not even have a category for this and the Board at that point did not even want to consider moving forward." Later, in the same Minutes at 11:28:08 A.M., Mr. Jacobs stated that "Once the Board decides to take a look at that section (meaning gaming) they will have to draft up all Regulations and then they (Snake's) can make an application." Further in the Minutes at 11:30:11 A.M., Mr. Jacobs stated, "...no one will be accepted until Regulations are drafted, and added there is nothing on the books." He later added, "Once the ABC Board looks into this, then Regulations could be drawn up." At 11:32:10 A.M., Mr. Jacobs stated, "...they offer a Restaurant Permit, and if they (Snake's) follow all the Rules and Regulations then they can apply for a Bar Permit." However, no such Regulations existed and to date none have been drawn up. Again, the ABC Board never formally informed the applicants, or the Community, of their intentions of drawing up Regulations or getting Community input before issuing Permits for these types of establishments.

Lastly, this Panel asked the ABC Board if any Regulations or Procedures for this type of Permit had been created. The response was a letter, dated September 4, 2009, sent by Courtney Bourgeois. In this letter she stated, "Since the ABC Law does not have a category for gaming, the question that was asked of the Board was "are you in favor of issuing alcohol permits to Poker/Gaming establishments?" If the answer was "yes" then new regulations and administrative fees etc... would have to be drawn up, similar to the section on Wine Manufacturing." "Since the Answer was no, the Board decided that they will not

license ABC Permits with poker/gaming rooms.” She also testified that, “Lionel asked the six Members in attendance if they were in agreement to issue Permits to Poker Houses,” and “if they voted yes, that Regulations would have to be made.” The ABC Board recognizes that Regulations are required for this area, but instead of stating this to the applicants and the Community, they simply responded “no”. The ABC Board again provided no reasoning for their decision.

### **FAIR HEARING**

When a Board is granted the power to issue or deny permits, with it comes a responsibility and duty to provide applicants with the opportunity to be heard. In other words, all applicants should be given the opportunity to present all relevant information to the Board so that the Board can make a well-informed decision. An applicant will only be fairly treated if they are given the chance to present their request for a permit. The whole process is given more legitimacy if applicants feel they have been given a fair chance to present their position. A hearing provides the opportunity to share information and explain why the applicant believes they should be issued a permit. The Board has the duty to listen attentively and ask pertinent questions, as well as, provide information. The Panel is aware that the ABC Board is voluntary and that it is time consuming to conduct hearings but it must be done to ensure fairness.

In this case, the applicants were never given a hearing until after a decision by the ABC Board had been rendered. Under **Section 172 (o)**, of the **ABC Law**, the ABC Board is to develop “a process by which the Board will conduct hearings.” Under **Section 172 (p)**, the Board will determine “the procedure applicable before it.” As well, **Section 78 (b)** states, “The Board may review or revoke any decision it has rendered: where a party was unable for good reason, to be heard at the time the decision was made”.

The ABC Board only met with Snake’s owners after the permit application was denied. The meeting was held on October 6, 2008, two (2) months after the refusal, and, according to the ABC Minutes, was set up to “discuss alternatives”. According to the testimony of Mr. Myiow, the Board Members did not answer any of the questions he posed and the Minutes do not include “a lot of things he said”. As well, according to the ABC Board Members and Mr. Myiow, no Board Member ever visited the establishment before the decision was rendered. However, it must be noted that Mr. Myiow did testify that Mr. Goodleaf “came to make a visit but the place was closed at the time.” Mr. Goodleaf testified that he did not remember the date of his visit, but that “it was after Stan’s (Mr. Myiow) presentation” (October 6, 2009). Mr. Goodleaf stated, “He visited for a Restaurant Permit”.

The ABC Board Minutes make no mention of the “alternatives”. Only through testimony at the present Hearing, and evidence in the form of MCK Minutes and email correspondence between Mr. Myiow and Courtney Bourgeois, were the “alternatives” mentioned. The MCK Minutes were from a meeting held



between, the Mohawk Council of Kahnawá:ke Chiefs and the ABC Board on March 2, 2009. The email correspondence was sent to Mr. Myiow on behalf of the ABC Chairperson, Lionel Jacobs, by Courtney Bourgeois, ABC Administrative Assistant, on March 20, 2009.

The "alternatives" were to issue a Restaurant Permit only, and, "that the Poker Club and restaurant would have to be separate entities." As well, the ABC Board "insists that the name of the Restaurant not included (sic) Snake's Poker Room". Snake's owners were also informed by email, to submit an application and check off one category, "meaning Restaurant." It must be pointed out that nowhere in the ABC Law is there a provision granting the ABC Board the authority to require an establishment to change its name. It is beyond the ABC Board's scope of authority to request a name change and the Board cannot refuse a Permit based on the name of an establishment.

As well, according to the testimony of the ABC Chairperson, Lionel Jacobs, he stated, in the MCK Minutes at 11:32:10 A.M., "that they offer a restaurant permit and that if they follow all the Rules and Regulations then they can apply for a Bar Permit." As well, according to the MCK Minutes, Chairperson Lionel Jacobs also stated "that Stanley could apply today, for a Restaurant Permit and there would not be a problem." During Mr. Myiow's testimony, he stated that "he would gladly accept a Restaurant Permit but ...after the probation period, to apply for a Bar Permit."

During both the testimony of Mr. Myiow and Mr. McComber, respectively, and in the ABC Board Minutes of October 6, 2009, it was stated they employ a large number of Community Members as employees of their establishment. Mr. McComber testified that he invested a lot of money in the establishment. Mr. Myiow testified that he has been conducting this sort of business for many years in other establishments within Kahnawá:ke without incident. He stated that the years of experience taught him what is required to run a successful establishment. It would appear that a lot of time, money and effort was put into setting up this establishment, which is what most businesses invest if they wish to be successful.

As well, Snake's owners testified that they wanted to follow all of Kahnawá:ke Laws to be a legitimate business. They have a Kahnawá:ke Gaming Permit and have obtained all of the required documents under Section 114 of the ABC Law, namely, proof of fire inspection, sanitation certificate, and proof of insurance. Mr. Myiow testified that he obtained a copy of the ABC Law from the ABC office prior to making an application and "did everything they were supposed to", according to the ABC Law.

As mentioned, in the above section, there was a change in the Board Membership after Snake's application was first submitted and the application was not dealt with immediately. A second change occurred when Courtney Bourgeois replaced Lisa Delormier as the ABC Board's Administrative Assistant. The application was only dealt with after elections were held and Ms. Bourgeois was still familiarizing herself with the ABC Board functions. The only two (2) Members from the former Board elected to the present Board, were Lionel Jacobs and Mark Goodleaf. Many of the Board Members were new to the Board. Lisa Delormier, the former Administrative Assistant stated that "it was the outgoing Board's decision not to go against Council (MCK) and they wanted input for Gaming and Alcohol" and that "the outgoing members did not want to make a decision (regarding the application by Snake's) and then leave."

The statement Ms. Delormier made, in regards to the MCK, is in reference to a Request for Decision (hereinafter RFD) by the ABC Board, dated January 26, 2004. The MCK was asked if they supported the sale and consumption of alcohol in a gaming house. The MCK's response was "no", however, this was from 2004 and prior to the establishment of the Kahnawá:ke Gaming Commission. The present ABC Board Members were asked by this Panel if they should have re-visited the question by asking the current MCK the same question, since so many years have passed. Some ABC Board Members said they probably should have, at least one Member stated that the ABC Board is a separate entity at arm's-length of the MCK and have been mandated to make decisions on its own.

During the testimony of Ms. Lisa Delormier, reference was made to a Survey that was conducted by Tewatohnhi'saktha, at the request of the former ABC Board. Ms. Delormier stated that the former Board came up with the questions that were posed in the Survey, conducted in April 2008. Although, it is not up to this Panel to determine whether the Survey was valid, it must however be mentioned since the ABC Board commissioned this Survey while it was making a decision on Snake's Permit application. It must be noted that the ABC Board never advised either applicant that the Survey was being conducted. As stated, in the opening of this document under the "Request for Arbitration" heading, this Panel is not mandated to answer the larger questions of whether any establishment in Kahnawá:ke may or may not sell or serve alcohol; or, to decide on the ill effects of alcohol on the Community of Kahnawá:ke. This Panel's only mandate is to determine if Snake's was subject to a fair and objective process.

Even though there was a change in the Board Membership there was still a duty to conduct a Fair Hearing. Since the Board has the power to issue or deny a Permit it should provide all applicants with the opportunity to present all of the relevant information so that the Board can make a well-informed decision. Both the former and present Board did not afford that opportunity to Snake's owners and the present Board only afforded it after the fact. With regards to the actual application made by Snake's and the refusal letter sent by the Board, many of the Board Members testified that they never actually

saw either until this Arbitration Hearing. The present Board had a responsibility to at least look at the application submitted by Snake's prior to making a decision.

As well, even if both Boards decided not to make a decision because they were waiting for Community feedback, they both had a duty to inform Snake's owners of this fact. There is no transparency if the applicants are not informed of what the Board is doing.

### **UNBIASED DECISION-MAKING**

When making decisions regarding the issuance or refusal of Permits, the decision-makers have to be unbiased. In the testimony heard, there were several Board Members who stated that Alcohol and Gaming do not go together. Specifically, in the ABC Board Minutes of October 6, 2008, Board Member, Larry Jacobs stated, "he has done research and had seen the big link between drinking and gambling." As well, one (1) Member testified that they "knew what the Community wants from what I hear on the street". The ABC Board has the mandate to issue and refuse Permits based on the **ABC Law** and not on their own personal opinion or the opinion of the "word on the street." Board Members are entitled to their personal opinions; however, it should never interfere with their decision-making, which should be fair, objective and observant of the Laws and Regulations guiding the decision-making process.

The ABC Board relied on an outdated RFD and a questionable Survey in arriving at its decision, when their power to decide, and the principles which are to guide them in making their decisions, is found in the **ABC Law** alone. Furthermore, the Board never even provided the applicants with the information that it was relying on the RFD and Survey in arriving at their decision.

### **SUFFICIENT REASONING**

When a Board is delegated with the power to grant or deny a Permit it has the duty to provide sufficient reasons in its decision, especially if it decides to deny a Permit. It is expected that the grounds for refusal would be clearly identified and explained to the applicant. In this case the Board sent a letter to the applicants refusing the Permit Request without stating specific grounds, as required by the **ABC Law**.

The letter dated August 13, 2008, stated, "... the Board has met and decided unanimously to vote against granting Gaming Rooms with Alcohol Permits at this time. The application you submitted for a Bar and Restaurant Permit under the name of Snake's Poker Room has be (sic) Denied. The ABC Board will not license the sale or consumption of Alcohol within a Gaming Room."

Under Section 77 of the ABC Law, it states, the Board's decisions "shall be in writing and include the reasons on which it is based. The decision shall be signed by the persons who rendered it and shall be entered in the Registry kept by the Board." Under Section 121 of ABC Law, it states, the Board "must given their reasons, in writing, to the applicant" in the event an application is refused.

The Board as a decision-making body, has a duty to draft, review and approve its own correspondence, citing specific reasons why it is refusing a Permit. All those who rendered the decision should sign the letter, as set out in Section 77 of the ABC Law. When a body makes a decision it has to take responsibility and be accountable for that decision. It must be noted that nowhere in the ABC Law does it state that the Chair may sign on behalf of the Board. As well, the Board has not drafted a Regulation assigning the Chair with this authority.

The refusal letter sent to Snake's stated **what** the reason was for denying the Permit, but failed to state **why**. The ABC Board stated, they "decided unanimously to vote against granting Gaming Rooms with Alcohol Permits at this time... The ABC Board will not license the sale or consumption of Alcohol within a Gaming Room." The letter should have been more specific in terms of why they were refusing to grant a Permit. The Community and applicants are not privy to what occurs at an ABC Board meeting, so the Board should be very precise in the wording of its letters so that their position is clear. The Board should have mentioned in their refusal letter that they were awaiting Community input, or, that they were looking at drafting Regulations before making any decisions relating to Permit requests made on behalf of Gaming/Poker rooms, and, that until such time as these Regulations were created, and/or Community input received, all such applications were being put on hold.

On the face of it, it seems that a reason has been provided: the Board decided not to grant Alcohol Permits to Gaming establishments. However, in all fairness, the grounds for this decision should have been identified. The applicants were not provided with actual reasons based on the ABC Law. The decision to refuse the Permit was based in part on the Board's opinion that Alcohol and Gaming do not belong together, as well as, the reliance on an outdated RFD, and Survey. The Conclusions of the Survey are somewhat questionable, as the responses given were more in line with being against Gaming establishments altogether, as opposed to serving alcohol in a Gaming establishment.

## DECISION

Based on the ABC Law, the facts obtained through the testimony of the witnesses; documentation and evidence presented, the Panel has concluded that:

1. Due Process was not strictly adhered to;

2. A Fair Hearing was not conducted;
3. There was perceived bias on the part of some Board Members; and,
4. Sufficient Reasons were not provided in the ABC Board's decision to deny the Permit.

Therefore, the Panel is reversing the ABC Board's decision dated Aug 13, 2008, denying the application submitted by Snake's Poker Club. Effectively, upon the signing of this Decision, the Panel grants the Restaurant and Bar Permit applied for by Snake's Poker Club and strongly suggests the ABC Board attach reasonable limits to the Permit, as contained in the ABC Law.

### **RECOMMENDATIONS**

Under Section 44 of the ABC Law it states, the Alcoholic Beverages Control Board is intended to regulate the sale of alcohol within Kahnawá:ke, in accordance with the ABC Law and Regulations. With this objective in mind, the Panel would also offer the following recommendations:

1. To ensure that the Community and applicants comply with Community Laws and Regulations, the Laws should be transparent and be made publicly available. To ensure fairness to applicants, the ABC Board should enact Regulations as required by the ABC Law. As well, the ABC Board should set out in their application form, references to relevant sections of the Regulations which outline what limitations will be imposed regarding, number of types of Permits, Hours of Operation, and specific locations, etc.
2. Through the Hearing process it was confirmed that each Board Member understood the ABC Law gave them the power to issue or deny a Permit. However, each Member had a different interpretation of how the entire application process worked. It may be advisable to develop written Guidelines /Procedures which coincide with the Regulations required by the ABC Law for this process. One example of what can be included in the process is that all documentation received by the ABC Board should be stamped with a date of receipt. Another example of what can be included in the process is the steps to follow for posting in the newspaper, whether it concerns an application, or, a notice whereby a Permit is granted or denied. As well, the ABC Board should develop a hearing process which sets out the steps it will take in the processing of an application. These steps should be clearly laid out in the Guidelines/Procedures.
3. As there are now validly licensed Gaming establishments within the Community, the Board must seriously consider drafting Regulations which set out the criteria for processing ABC Permit applications from these establishments, as soon as possible. It is advisable that this be done in collaboration with the Gaming Commission.

Dated this June 29th, 2010

Kahnawa:ke Arbitration Panel

Stephanie Cross

Stephanie Cross

Chris Bush-Diabo

Chris Bush-Diabo

Tonya Perron

Tonya Perron