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## Commentary: Gaming in Kahnawà:ke

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**Abstract:** This article is an expert commentary by lawyer Murray Marshall, written for the Critical Indigenous Gambling Studies special issue of *Critical Gambling Studies*.

### Introduction

June 10, 2021 will mark the 25th anniversary of the enactment of the *Kahnawà:ke Gaming Law*<sup>2</sup> (the ‘Gaming Law’)—a significant milestone for Kahnawà:ke and a good opportunity for a brief retrospective of its accomplishments in both online and terrestrial gaming—and a review of recent developments within Kahnawà:ke Territory.

First, some context. Kahnawà:ke is an Indigenous<sup>3</sup> community of approximately 9,000 Mohawk persons located on the south shore of the St. Lawrence River, 20 minutes from downtown Montréal, Canada. The Mohawk Territory of Kahnawà:ke (the ‘Territory’) presently occupies approximately 20 square miles.

The Mohawk Council of Kahnawà:ke, the community’s elected governing body, enacts laws and creates institutions that are necessary for maintaining peace, order, and good government within their Territory. Kahnawà:ke has its own police force (the Kahnawà:ke Peacekeepers), court, schools, hospital, fire station and social services, all of which operate under the control and regulation of the Council and laws enacted by the Council. The Mohawks of Kahnawà:ke have consistently and historically asserted sovereignty and jurisdiction over their Territory. They have never been defeated in battle and have never entered into a treaty with any government that waives or diminishes their sovereignty. Kahnawà:ke’s jurisdiction over gaming flows from its inherent right as an Indigenous community to govern its own affairs. This right is an aspect of the ‘aboriginal rights’ recognised and affirmed in subsection 35(1) of *Canada’s Constitution Act, 1982* and, more recently, in

the United Nations Declaration on the Rights of Indigenous Peoples (‘UNDRIP’).

Everything that Kahnawà:ke has accomplished in the gaming industry over the past generation has been grounded on its own inherent Indigenous jurisdiction. In fact, Mohawk gambling traditions date back many hundreds of years before the European colonization of North America. Historic evidence confirms that betting on games of skill and chance has always been integral to the Mohawk culture. Games such as lacrosse—sometimes called “the little brother of war” were used for high-stakes “winner take all” events between Mohawk and other Indigenous communities and were often used as a means of resolving conflicts. Games were always subject to a complex set of rules and were closely monitored by designated officiants.

Although some commentators have questioned the validity of Kahnawà:ke’s jurisdiction over gaming, no government, person, or agency has ever initiated a legal challenge of any kind. The only occasion on which Kahnawà:ke has been involved in a judicial proceeding resulted in a ruling by the Superior Court of Québec supportive of Kahnawà:ke’s role in online gaming<sup>4</sup>.

### Indigenous Gaming in Canada

Presently, there are only two ways that an Indigenous community can participate in the gaming industry in Canada:

1. If possible, enter into an agreement with the province in which the Indigenous community is located<sup>5</sup>; or

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<sup>2</sup> MCR #26/1996-97, 10 Ohiari:ha/June 1996 <http://www.kahnawà:kemakingdecisions.com/legislation/laws/docs/Gaming.pdf>

<sup>3</sup> Although the term ‘First Nations’ is often used to describe Indigenous communities in Canada, I prefer and will use ‘Indigenous communities’ throughout this article.

<sup>4</sup> *Horne v. Kahnawà:ke Gaming Commission et al.*, Superior Court of Québec, District of Montreal, Docket No. 500-17- 031045-068, July 4, 2007: <http://gamingcommission.ca/news/pr07042007a.pdf>

<sup>5</sup> Pursuant to paragraphs 207(1)(a) or (b) of the *Criminal Code of Canada*.

2. Exercise and assert the Indigenous community's own jurisdiction over gaming.

Both options have inherent uncertainties. For example, although most Canadian provinces have developed arrangements to share gaming revenues with Indigenous communities, the province of Québec<sup>6</sup> has steadfastly refused to follow suit—leaving it to Indigenous communities to assert their own jurisdiction over gaming, as Kahnawà:ke has done. Moreover, although Kahnawà:ke's assertion of jurisdiction has been successful for 25 years, there are limitations to reaching maximum potential due to a continuing stigma associated with assertion of Indigenous jurisdiction.

Further, both options tend to isolate Indigenous communities by creating an uneven patchwork of different provincial arrangements—which are often complex and byzantine<sup>7</sup>.

Most importantly, neither option allows for full participation by Indigenous communities in Canada's gaming industry. This stands in contrast to the United States where the sovereignty of Tribes is recognized as giving them a *right* to participate in gaming so long as the State offers the same kind of gaming. To date, Canada has recognized no comparable right for its Indigenous Peoples.

### Online Gaming in Kahnawà:ke

Kahnawà:ke's Gaming Law established and empowered the Kahnawà:ke Gaming Commission (the 'KGC')—the regulatory body that licenses and regulates all gaming and gaming activities conducted within and from the Territory. In 1998, Kahnawà:ke built within its Territory a state-of-the-art co-location data centre ('Mohawk Internet Technologies') aimed at the online gaming industry—still in its infancy at that time. In July 1999, the KGC enacted its *Regulations concerning Interactive Gaming*<sup>8</sup> and Kahnawà:ke's foray into the online gaming space was launched.

Since 1999, the KGC's distinctive red, white, and black logo has become a familiar sight—appearing on literally hundreds of online casino, poker, and sportsbook sites<sup>9</sup>.

By 2005, Kahnawà:ke dominated this global industry. In a research report on online gaming dated June 14, 2005, Desjardins Securities found that:

Kahnawà:ke is the most popular jurisdiction for the top 100 online gaming sites...The geographic proximity to the North American market as well as the relative political stability make this sovereign community ideal for

establishing online casino operations. Over one fifth of the top 500 online casinos have their sites based in this jurisdiction.

Since 2015, the Mohawk Council of Kahnawà:ke took the initiative to become the operator of the well-respected gaming site: Sports Interaction<sup>10</sup>. For the purposes of this project, the Mohawk Council established an entity known as 'Mohawk Online'. To demonstrate its commitment to operational integrity, Mohawk Online chose to become one of the most tightly regulated gambling companies in the world. Mohawk Online is licensed and regulated by the Kahnawà:ke Gaming Commission and the Jersey Gambling Commission and is supervised for anti-money laundering and counter terrorist financing controls by the Jersey Financial Services Commission. Mohawk Online accepts players only from Canada. As a socio-economic initiative established for the benefit of the Kahnawà:ke community, revenue generated by Mohawk Online is invested back into the community to help create a better future for the people of Kahnawà:ke. Revenues received from Mohawk Online's first five years of operations exceeded expectations and have already produced tangible benefits within the community.

### Terrestrial Gaming in Kahnawà:ke

In 2007, the KGC enacted its *Regulations concerning Poker Rooms*<sup>11</sup> and Kahnawà:ke moved into the terrestrial gaming industry. Within three years, several poker rooms were operating within the Territory including Playground Poker<sup>12</sup> and Magic Palace<sup>13</sup>. With 75 poker tables, Playground is home to the largest poker events in Canada, including the World Poker Tour.

In 2018, the land-based gaming offering in Kahnawà:ke was supplemented with the addition of electronic gaming devices ('EGDs'), currently available only at Playground Poker and Magic Palace. Licensed and regulated under the KGC's *Regulations concerning Electronic Gaming Devices*<sup>14</sup>, revenues generated from the operation of the EGDs is shared with the Mohawk Council and used for the benefit of the Kahnawà:ke community.

### Benefits for the Community of Kahnawà:ke

The gaming industry in Kahnawà:ke has directly or indirectly generated hundreds of jobs and training opportunities—for both community members and residents of nearby communities. Jobs include administrative and managerial positions, customer support, network technicians, dealers and restaurant

<sup>6</sup> Canada's second most populous province: <https://www.quebec.ca/en/>

<sup>7</sup> *First Nations Gaming in Canada: Navigating the Labyrinth*, Murray Marshall, *Gaming Law Review*, Vol. 23, No. 8:

<https://www.liebertpub.com/doi/10.1089/glr.2019.23810>

<sup>8</sup> <http://www.gamingcommission.ca/docs/RegulationsConcerningInteractiveGaming.pdf>

<sup>9</sup> <http://gamingcommission.ca/>

<sup>10</sup> [www.sportsinteraction.com](http://www.sportsinteraction.com)

<sup>11</sup> <http://www.gamingcommission.ca/docs/KGCPokerRegulations.pdf>

<sup>12</sup> <https://www.playground.ca/>

<sup>13</sup> <https://magicpalace.ca/>

<sup>14</sup> <http://www.gamingcommission.ca/docs/KGCPokerRegulations.pdf>

workers. In a small Indigenous community, this has had a significant positive impact.

The gaming industry has also created several important revenue streams for the Mohawk Council—used for the benefit of the community—including the licensing fees collected by the KGC; commercial revenue received from Mohawk Online, Mohawk Internet Technologies and the land-based poker rooms and EGD facilities. Over the past 25 years, tens of millions of dollars have been generated from the gaming industry for the benefit of the Kahnawà:ke community—a model of Indigenous self-sufficiency.

In addition to the tangible benefits, Kahnawà:ke's exercise of jurisdiction over gaming has put the community on the international map. For this relatively small Indigenous community, the recognition and respect it has earned—from players, regulators, and governments around the world—has been priceless. Kahnawà:ke has always recognised the value of dialoguing and, wherever possible, cooperating with regulatory agencies in other jurisdictions. Over the years, the KGC has signed Memoranda of Understanding or exchanged letters of mutual cooperation with regulatory agencies in Antigua, Malta, Alderney, Jersey and several Tribal and First Nations entities. These relationships have proven to be beneficial on many occasions. Within the past five years, the KGC exchanged letters of mutual recognition and cooperation with the Division of Gaming Enforcement for the State of New Jersey—one of the oldest and most respected gaming regulatory agencies in North America.

Everything that Kahnawà:ke has built and developed over the years has been entirely with its own abilities and resources with no assistance—no loans, subsidies or handouts—from any outside governments or banks. The gaming industry in Kahnawà:ke was built on Mohawk ingenuity, resourcefulness and determination—a perfect example of what has Canada's Governor General referred to in her 2019 Throne Speech as "Indigenous genius"<sup>15</sup>.

### **Author Details**

Murray Marshall has been a practising Canadian lawyer for more than 33 years and is, or has been, a member of the bars of Alberta, Québec and Ontario. Mr. Marshall's practice has always focused on issues of concern to aboriginal peoples. In the 1990's, Mr. Marshall established and managed the Legal Services department of the Mohawk Council of Kahnawà:ke and drafted a number of important pieces of legislation, including: the *Kahnawà:ke Gaming Law*. Mr. Marshall has spoken at numerous aboriginal and gaming conferences in various parts of the world and authored articles and papers for a variety of publications.

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<sup>15</sup> <https://www.ourcommons.ca/DocumentViewer/en/43-1/house/sitting-1/hansard>