

REGULATION RESPECTING DISCIPLINARY MEASURES FOR DECISION-MAKERS APPOINTED TO THE ADMINISTRATIVE TRIBUNAL

K.R.L. c. J-1, r-6

Enacted by Mohawk Council Executive Directive (MCED) #XX/2026-2027 on _____, 2026.

SECTION I - GENERAL

1. PURPOSE

- 1.1 The purpose of this Regulation is to establish the process for addressing complaints made against Decision-makers appointed to the Administrative Tribunal.

2. SCOPE

- 2.1 A Decision-maker may be subject to disciplinary measures for failure to comply with:
- a) the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*;
 - b) their terms of reference;
 - c) their oath of office;
 - d) their confidentiality agreement; or
 - e) any other applicable standards or duties set out in legislation, regulations, codes, policies or procedures.

3. DEFINITIONS

- 3.1 Except where different definitions are set out below, the definitions provided in the *Kahnawà:ke Justice Act* have the same meaning in this Regulation.

- 3.2 For the purposes of this Regulation:

Clerk means the clerk for the Administrative Tribunal as assigned by Justice Services.

Complainant means the person who submitted a complaint against a Decision-maker.

Decision-maker means a member of the Administrative Tribunal.

DRC means the *ad hoc* disciplinary review commission.

Justice Services means the Justice Services Division of the Mohawk Council of Kahnawà:ke.

Lead Decision-maker means the Decision-maker who, in addition to the regular duties of a Decision-maker, has certain administrative responsibilities attributed to them by law or regulation.

Professional secrecy means the duty of a professional, including a priest or other religious minister, not to share privileged information entrusted to them by a client by reason of their profession or position. A duly authorized representative is also bound by this duty.

Served means formal delivery of a document or proceeding to a person.

Solemn Affirmation means a solemn and formal declaration given by a person promising to tell the truth when giving testimony as a witness or making an affidavit.

Tribunal means the Administrative Tribunal as established pursuant to the *Kahnawà:ke Justice Act*, K.R.L. c. J-1.

SECTION II - COMPLAINTS & COMPLAINT PROCEDURE

4. COMPLAINTS

4.1 A complaint against a Decision-maker may be submitted by any of the following:

- a) a party to a proceeding being adjudicated by the Decision-maker;
- b) a representative of a party to a proceeding being adjudicated by the Decision-maker;
- c) a parent, tutor or curator, or any other person legally authorized or required to act on behalf of a child or incapable person who was directly affected by the conduct that is the object of the complaint; or
- d) any other person or organization who has reason to believe that a Decision-maker has failed to comply with their obligations set out at article 2.1 of this Regulation.

5. CONTENT OF COMPLAINT

5.1 A complaint must include:

- a) the name and contact information of the complainant(s) and, where applicable, the person authorized to act on behalf of the complainant;
- b) the name of the Decision-maker who is the subject of the complaint;
- c) the file number of their case before the Tribunal, where applicable;
- d) where conduct at a hearing is in question, a copy of the relevant court file, the audio recording of the hearing in accordance with the *Policy on Administrative Tribunal Operations*, and the decision rendered;
- e) the name of all the witnesses to the conduct, act, event, or occurrence at issue;
- f) the date of the conduct, act, event, or occurrence at issue;

- g) all the facts and circumstances surrounding the conduct, act, event, or occurrence at issue;
- h) confirmation of whether an interpreter will be required; and
- i) a Solemn Affirmation signed by the complainant(s) whereby they attest that all facts contained in the complaint are true.

5.2 The complainant(s) will also include any supporting documentation referenced in the complaint.

5.3 Justice Services will make available a complaint form to assist parties with submitting a complaint against a Decision-maker.

6. METHODS OF SUBMISSION

6.1 The complaint and any required documents and/or notices must be filed at the offices of Justice Services by one of the following methods:

- a) in person;
- b) bailiff;
- c) registered mail; or
- d) any other means that reasonably ensure proof of reception.

7. DATE OF SUBMISSION

7.1 A complaint must be filed within thirty (30) days of the occurrence or knowledge of the occurrence of the conduct, act or event that is the object of the complaint.

If there are exceptional circumstances as determined by the Commissioner of Justice, a complaint may be accepted if it is filed after thirty (30) days but not more than one (1) year from the occurrence of the conduct, act or event which gives rise to the complaint.

7.2 The date of submission of a complaint and any required documents and/or notices will be the date it is received at the offices of Justice Services.

A document sent by registered mail is presumed to be filed on the postmarked date.

8. CLERK REVIEW

8.1 The Clerk will perform a review of the complaint to ensure that it complies with article 5.1 of this Regulation. The review will be performed in accordance with the *Policy on Administrative Tribunal Operations*.

8.2 If the complaint complies with article 5.1 of this Regulation, the Clerk will stamp the complaint with the date on which it was received, send an acknowledgement of receipt to the complainant and forward it to the Commissioner of Justice without delay.

8.3 If the complaint does not comply with article 5.1 of this Regulation, it will not be considered to be validly filed and will not interrupt nor restart the counting of days in accordance with

articles 7.1 and 7.2. The Clerk will advise the complainant of this and that their complaint will not be forwarded to the Commissioner of Justice for review until such time as all requirements are met.

SECTION III - REVIEW BY COMMISSIONER OF JUSTICE

9. NOTIFICATION

9.1 Upon reception of the complaint, the Commissioner of Justice will forward a copy of the complaint to the Decision-maker who is the subject of the complaint and the Lead Decision-maker, as applicable.

9.2 The Commissioner of Justice will notify the Decision-maker who is the subject of the complaint that they may not contact the complainant nor attempt to influence the complainant.

10. REVIEW FOR ADMISSIBILITY

10.1 The Commissioner of Justice will immediately conduct a preliminary review of the complaint to determine whether the complaint is either (1) admissible or (2) inadmissible because it is frivolous, vexatious, or clearly without merit.

A complaint is frivolous, vexatious or clearly without merit if, *prima facie* (on its face), it lacks substance, is hopeless or plainly cannot succeed in its purpose.

10.2 The Commissioner of Justice may request explanations from the complainant(s) and the Decision-maker who is the subject of the complaint. The Commissioner of Justice may also request from any person such information as may be deemed necessary.

10.3 If the complaint is determined to be frivolous, vexatious, or clearly without merit, it will be rejected as inadmissible and the Commissioner of Justice will provide a written decision including reasons to the complainant, the Decision-maker who is the subject of the complaint, and the Lead Decision-maker, as applicable.

10.4 Within fifteen (15) days of the receipt of the Commissioner of Justice's rejection of the complaint as being frivolous, vexatious, or clearly without merit, the complainant may request that the Court of Kahnawà:ke review the Commissioner of Justice's decision.

The decision of the Court of Kahnawà:ke is final and without appeal.

11. ADMISSIBLE COMPLAINTS

11.1 If the complaint is deemed admissible, the Commissioner of Justice will evaluate and determine:

- a) whether corrective or remedial measures are appropriate; or
- b) whether a full and impartial investigation should be conducted by the DRC.

12. CORRECTIVE OR REMEDIAL MEASURES

12.1 If an admissible complaint alleges misconduct by a Decision-maker that would not undermine the integrity of the Tribunal or the Kahnawà:ke Justice System, the Commissioner of Justice will request in writing that the Lead Decision-maker resolve the

complaint in accordance with the *Policy on Corrective & Remedial Measures for Decision-makers Appointed to the Administrative Tribunal*.

- 12.2 The Commissioner of Justice will resolve complaints in accordance with the *Policy on Corrective & Remedial Measures for Decision-makers Appointed to the Administrative Tribunal* in the event that:
- a) the complaint is submitted against the Lead Decision-maker; or
 - b) the Lead Decision-maker is in a conflict of interest or there is a reasonable apprehension of bias as defined in the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*.

13. INVESTIGATION

- 13.1 If an admissible complaint alleges misconduct by a Decision-maker that would undermine the integrity of the Tribunal or the Kahnawà:ke Justice System, the Commissioner of Justice will submit the complaint to the Kahnawà:ke Justice Commission with written reason(s) for making that determination and request the appointment of a DRC to conduct a full and impartial investigation.

The Commissioner of Justice will inform the Complainant, the Decision-maker who is the subject of the complaint and the Lead Decision-maker, as applicable, that the complaint will proceed to a full and impartial investigation conducted by a DRC.

- 13.2 Notification of the complaint will also be provided to the Ietsénhaienhs/ Ratsénhaienhs of the Mohawk Council of Kahnawà:ke responsible for the Justice Portfolio.

SECTION IV - COMPLAINT BY COMMISSIONER OF JUSTICE

14. SUBMISSION OF COMPLAINT BY COMMISSIONER OF JUSTICE

- 14.1 Complaints submitted by the Commissioner of Justice will not undergo the reviews set out at articles 8 and 10, respectively.

All other requirements found at articles 5, 6, 7 and 9 of this Regulation, adapted as required, will continue to apply.

15. REVIEW OF COMPLAINT BY KAHNAWÀ:KE JUSTICE COMMISSION

- 15.1 The Kahnawà:ke Justice Commission will review the complaint submitted by the Commissioner of Justice and determine:

- a) whether corrective or remedial measures are appropriate; or
- b) whether a full and impartial investigation should be conducted.

The Kahnawà:ke Justice Commission will apply articles 11.1-13.2 of the present Regulation, adapted as required.

- 15.2 If the Kahnawà:ke Justice Commission decides that a full and impartial investigation should be conducted, the General Manager of Justice Services will be responsible for the overall administration and general management of the DRC in place of the Commissioner of Justice.

- 15.3 A Justice of the Peace or Judge of the Court of Kahnawà:ke will replace the Lead Decision-maker on the DRC and function as chairperson when a complaint is submitted by the Commissioner of Justice and:
- a) the complaint is submitted against the Lead Decision-maker; or
 - b) the Lead Decision-maker is in a conflict of interest or there is a reasonable apprehension of bias as defined in the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*.

SECTION V - DISCIPLINARY REVIEW COMMISSION

16. COMPOSITION

- 16.1 The Kahnawà:ke Justice Commission will appoint, by resolution, a three (3) person DRC to conduct a full and impartial investigation into the complaint. It will decide whether disciplinary measures should be imposed on the Decision-maker.
- 16.2 The DRC will be composed of:
- a) the Lead Decision-maker, who will be the chairperson of the DRC;
 - b) one (1) person with formal legal training; and
 - c) one (1) person who is recognized as a Kanien'kehá:ka of Kahnawà:ke on the Kahnawà:ke Kanien'kehá:ka Registry.
- 16.3 The person with formal legal training and the person who is recognized as a Kanien'kehá:ka of Kahnawà:ke on the Kahnawà:ke Kanien'kehá:ka Registry will be selectively recruited by the Kahnawà:ke Justice Commission.
- 16.4 The Commissioner of Justice will replace the Lead Decision-maker on the DRC and function as chairperson when:
- a) the complaint is submitted against the Lead Decision-maker; or
 - b) the Lead Decision-maker is in a conflict of interest or there is a reasonable apprehension of bias as defined in the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*.

17. OATH OF OFFICE

- 17.1 Before taking office, every member of the DRC will solemnly affirm the following:
- “I, _____, do solemnly affirm that I will exercise the powers conferred upon me as a member of the Disciplinary Review Commission faithfully, diligently and impartially. I will fulfill my duties to the best of my knowledge and ability in accordance with the terms of reference for members of the Disciplinary Review Commission. I will refrain from engaging in conduct that would undermine public confidence in the Disciplinary Review Commission and the Kahnawà:ke Justice System.”

18. TERM OF OFFICE

18.1 The term of office of the DRC will be from the date of appointment in the resolution passed by the Kahnawà:ke Justice Commission until such time as they have rendered their final decision.

19. IMMUNITY

19.1 No legal proceedings may be brought against members of the DRC for any act done in good faith in the performance of their duties.

SECTION VI - MANAGEMENT AND SUPPORT

20. ADMINISTRATION

20.1 The Commissioner of Justice is responsible for the overall administration and general management of any DRCs appointed under this Regulation.

21. SUPPORT SERVICES

21.1 Justice Services will provide support services to the DRC, including the services of a Clerk who will be responsible to:

- a) coordinate meetings and hearings;
- b) attend meetings and hearings in their entirety;
- c) record entire meetings and hearings with a recording device;
- d) take notes at meetings and hearings;
- e) prepare the minutes of meetings and hearings; and
- f) circulate the minutes of meetings and hearings within ten (10) days of the meeting or hearing to the members of the DRC for approval.

21.2 The records of the DRC will be maintained by Justice Services.

All documents and related materials pertaining to a complaint will be kept for a period of no less than three (3) years from the date the delay for an appeal is expired or an appeal decision is rendered by the Kahnawà:ke Court of Appeal.

23. CHAIRPERSON

23.1 The Lead Decision-maker, as chairperson, will preside at all meetings and hearings of the DRC.

23.2 The chairperson will:

- a) maintain order and decorum at any meetings and hearings; and
- b) ensure all meetings and hearings are held in accordance with the provisions of this Regulation.

SECTION VII - PREPARATION FOR INVESTIGATION

24. INVESTIGATION

24.1 The DRC will conduct a full and impartial investigation in the form of a hearing to be completed within sixty (60) days of the date of appointment of its members. The purpose of the hearing is to investigate the complaint and reach an informed decision on the outcome.

25. STATUS DURING INVESTIGATION

25.1 The Lead Decision-Maker will administratively suspend the Decision-maker who is the subject of the complaint until such time as the delay for an appeal is expired or an appeal decision is rendered by the Kahnawà:ke Court of Appeal.

25.2 In the case where the Lead Decision-maker is the subject of the complaint, the Commissioner of Justice will administratively suspend the Lead Decision-maker until such time as the delay for an appeal is expired or an appeal decision is rendered by the Kahnawà:ke Court of Appeal.

26. NOTICE OF HEARING

26.1 The Clerk will coordinate and schedule the hearing with the parties.

26.2 Notice of the hearing will be sent to the parties no less than four (4) weeks before the hearing or within the time fixed by law or regulation, stating:

- a) the purpose, date, time and place of the hearing;
- b) that the parties have the right to be legally represented before the DRC; and
- c) that the DRC has the authority to proceed, without further delay or notice, despite the failure of a party to appear at the time and place fixed if no valid excuse is provided.

26.3 The DRC will, so far as is possible, convene the hearing at a date and time when the parties and any witnesses can attend without unduly disrupting their usual occupations.

27. EVIDENCE AND WITNESSES

27.1 The DRC will disclose the evidence no less than three (3) weeks prior to the hearing to the counsel for the Decision-maker who is the subject of the complaint or to the Decision-maker, where they are not represented, so as to enable them to respond fully to the complaint.

27.2 No less than two (2) weeks prior to the date fixed for the hearing, the parties will provide to the DRC, and to the Decision-maker or their counsel copies of any document and evidence to which they intend to refer during the hearing, as well as a list of witnesses they intend to call and the estimated time required for each witness.

28. SUBPOENA

- 28.1 Where a party wishes to summon a witness to provide evidence relevant to the investigation, the DRC will do so by means of a subpoena in the form established by Justice Services.
- 28.2 The subpoena must be served on the witness at least ten (10) days prior to the date of appearance. However, in the interest of justice, the DRC may reduce the ten (10) day service period. That decision must be specified in the subpoena.
- 28.3 A witness who is required to provide documents must take the necessary measures to protect the confidentiality of the information in the documents by providing them in a sealed envelope.
- 28.4 Where any person validly served a subpoena fails to appear before the DRC at the time and place specified therein, the DRC may:
- a) proceed in absence of the witness; or
 - b) where the witness is essential to the investigation:
 - i) reschedule the date of the hearing and issue a second subpoena; or
 - ii) order to the Peacekeepers or other appropriate authority to bring the person before the DRC to provide an explanation for their absence.
- 28.5 Where the explanation does not justify their absence, the DRC may condemn the witness to pay the costs related to the rescheduling of the hearing.
- 28.6 Every person who refuses to give testimony and/or comply with an order of the DRC may be prosecuted and found guilty of contempt before the Court of Kahnawà:ke.

SECTION VIII - HEARINGS

29. CONDUCT OF HEARINGS

- 29.1 The DRC will conduct the hearing in keeping with the duty to act impartially, so as to ensure a fair process.
- 29.2 The DRC has full authority over the conduct of the hearing. It will, in conducting the proceedings, be flexible. It will ensure the merits of the complaint are heard despite any procedural errors, provided it is in the interests of justice and does not impact procedural fairness.
- 29.3 The DRC may inquire into the relevant facts and call any person apt to be questioned on such facts.
- 29.4 The DRC will give the parties the opportunity to present the facts in support of their allegations and to present evidence on any matter that may be relevant to the investigation.
- 29.4 In the absence of provisions applicable to a particular situation, the DRC may apply any procedure consistent with the principles of natural justice.

30. WITNESSES

30.1 Except as provided for under articles 30.3 and 30.4, a person called to be questioned will solemnly affirm to tell the truth prior to giving evidence. The person will then state their name, address, and occupation.

30.2 Any person who has solemnly affirmed to tell the truth and who knowingly gives false or misleading testimony during a hearing may be subject to prosecution.

30.3 A person under fourteen (14) years of age will not make a Solemn Affirmation. Their testimony will be received only if they are able to understand and respond to questions. The DRC will require them to promise to tell the truth.

The DRC may conduct an inquiry to determine whether they are able to understand and respond to questions before permitting them to give evidence.

30.4 A person fourteen (14) years of age or older who does not understand the nature of a Solemn Affirmation will only give evidence on promising to tell the truth if they are able to communicate the evidence.

The DRC may conduct an inquiry to determine whether they are able to communicate evidence before permitting them to give evidence.

30.5 In the application of articles 30.3 and 30.4, no such proposed witness will be asked questions regarding their understanding of the nature of the promise to tell the truth for the purpose of determining whether their evidence shall be received by the DRC.

30.6 An expert witness must also solemnly affirm that their testimony will be objective, impartial, thorough, and based on the most current knowledge for which the expert's opinion is required.

30.7 Where the services of an interpreter are needed for a hearing, the interpreter must solemnly affirm that the translation will be accurate.

30.8 The DRC may order the exclusion of witnesses.

30.9 No witness may be compelled to answer a question that would result in the disclosure of privileged information protected by professional secrecy unless the right of privilege in that information is waived by the holder or as authorized by an express provision of law.

30.10 A person may be prosecuted and found guilty of contempt before the Court of Kahnawà:ke who:

- a) refuses to make a Solemn Affirmation when duly required to do so;
- b) omits or refuses, without just cause, to answer any question that may be lawfully put to them; or
- c) refuses to give evidence in accordance with this Regulation.

No answer given by a witness may be used against them in any prosecution under any law, except in the case of prosecution for perjury or providing contradictory evidence.

30.11 Any party may question witnesses to the extent necessary to ensure a fair process.

31. TECHNOLOGICAL MEANS

31.1 The DRC may receive evidence by videoconference, telephone conference or any other means it deems appropriate.

32. PRIVATE HEARINGS

32.1 Hearings will be held in private, and the minutes of the hearings will be confidential.

33. MINUTES

33.1 Minutes will be prepared by the Clerk in the form established by Justice Services. Minutes will contain the following information:

- a) the date and time of the beginning and end of the hearing, and its location;
- b) the name(s) of the members of the DRC in attendance;
- c) the names and addresses of the parties and, where applicable, those of their representatives and witnesses;
- d) the name and address of any interpreter;
- e) the exhibits filed;
- f) any admissions by the parties;
- g) incidental proceedings and objections;
- h) the date on which an act or action must be carried out;
- i) all orders and decisions made by the DRC, indicating the names of the members who supported the decision or opposed the decision;
- j) a summary of the discussion during the hearing; and
- k) the date on which the matter is taken under advisement.

33.2 A copy of the minutes will be maintained by Justice Services as part of the record.

34. RECORDING OF HEARING

34.1 Justice Services will record hearings in a manner that ensures the accurate reproduction of the proceedings and may include video recordings or audio recordings.

34.2 The recordings of the hearings will be confidential.

34.3 No other recording devices will be permitted to be used at a hearing.

34.4 In no case may images be recorded, nor may all or part of a video or audio recording be broadcast.

35. STANDARD OF PROOF

35.1 The DRC will decide on a balance of probabilities whether the complaint is well founded.

SECTION IX - DECISION

36. DECISION-MAKING PROCESS

36.1 All three (3) members of the DRC must be present at all meetings and hearings.

36.2 The principle of consensus will govern discussions and decisions of the DRC.

36.3 The decision-making process will be as follows:

- a) the matter will be brought forward by the chairperson;
- b) following discussion, the members of the DRC will each provide their views and attempt to reach a consensus decision;
- c) if consensus has been reached, the matter will be considered decided; and
- d) if consensus cannot be reached, the matter will be decided by a simple majority vote.

Any dissenting opinion and reasons must be included in the written decision.

37. IMPOSITION OF SANCTIONS OR MEASURES

37.1 If the DRC decides that the complaint is well founded and that there was misconduct that undermined the integrity of the Tribunal or the Kahnawà:ke Justice System, sanctions will be imposed. Sanctions include reprimand, suspension, removal from office or any other sanction that the DRC deems appropriate.

If it is determined that the complaint is well founded but the misconduct did not undermine the integrity of the Tribunal or the Kahnawà:ke Justice System, the DRC will impose corrective or remedial measures in accordance with the *Policy on Corrective & Remedial Measures for Decision-makers Appointed to the Administrative Tribunal*.

37.2 The DRC will consider any incidents of prior misconduct, the gravity of the conduct, or any other factors and circumstances deemed relevant when imposing a sanction or corrective or remedial measures.

38. TIMEFRAME FOR DECISION

38.1 The DRC must render written reasons for its decision on the merits of the complaint within thirty (30) days following the end of the hearing. The decision must be signed by each member.

39. DISTRIBUTION OF DECISION

39.1 A copy of the written decision including the reasons will be sent to all parties, their representatives and to any other person specified by law.

- 39.2 A copy of the reasons for the decision must also be filed with the Commissioner of Justice and notification of the decision must be provided to the Mohawk Council of Kahnawà:ke letsénhaienhs/Ratsénhaienhs responsible for the Justice Portfolio.

40. PUBLICATION OF DECISIONS

- 40.1 A copy of the written decision including the reasons will be published by Justice Services and made available to the public subject to any publication ban as determined by the DRC.

SECTION X - EXECUTION OF DECISION

41. SANCTIONS OR MEASURES OTHER THAN REMOVAL FROM OFFICE

- 41.1 The Commissioner of Justice will ensure that any sanction or corrective or remedial measures are carried out in accordance with the decision of the DRC.

SECTION XI - APPEAL

42. APPEAL OF DECISION

- 42.1 The decision of the DRC may be appealed to the Kahnawà:ke Court of Appeal within thirty (30) days of notification of the decision.
- 42.2 An appeal suspends the execution of the DRC's decision.

43. REMOVAL FROM OFFICE

- 43.1 Following a final decision ordering removal from office, the Mohawk Council of Kahnawà:ke Ratsénhaienhs will remove the Decision-maker who is the subject of the final decision by Mohawk Council Executive Directive without delay.

For greater clarity a final decision is either a decision of the DRC for which the delay to appeal has expired or an appeal decision rendered by the Kahnawà:ke Court of Appeal.

SECTION XII - FINAL

44. COMING INTO FORCE

- 44.1 This Regulation comes into force on the date fixed by Mohawk Council Executive Directive.

45. AMENDMENT

- 45.1 This Regulation may be amended by Mohawk Council Executive Directive in accordance with the Community Decision-Making and Review Process, as amended from time to time.