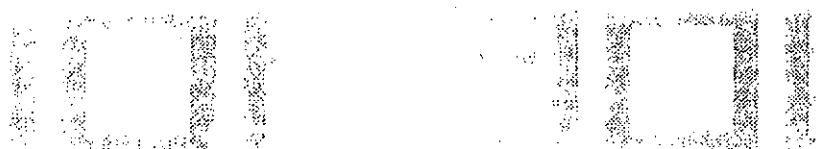


ALCOHOLIC  
BEVERAGES  
CONTROL  
BOARD

KAHNAWAKE COMMUNAL LAW  
ON ALCOHOLIC BEVERAGES  
ENACTED

27, KENTENHKO:WA/NOVEMBER 1995





# Kahnawake Communal Law on Alcoholic Beverages

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## PART I: JURISDICTION

### SHORT TITLE

1. This is a Kahnawake Communal Law in and for the Mohawk Territories of Kahnawake respecting the manufacture, possession, transportation, and sale of alcoholic beverages, and all matters related thereto. It may be referred to as the "Kahnawake Alcoholic Beverages Law".

### JURISDICTION

2. The Mohawk People of Kahnawake, as part of the Mohawk Nation and the Iroquois Confederacy, are, and have always been sovereign peoples.

3. The Mohawk People of Kahnawake have consistently and historically exercised ultimate and exclusive jurisdiction over the Mohawk Territories of Kahnawake.

4. The Mohawk People of Kahnawake have an existing and inherent right of self-determination which includes the right and the responsibility to maintain peace, order and security of persons and property within the Mohawk Territories of Kahnawake. The Mohawk People of Kahnawake have consistently and historically exercised this right and fulfilled this responsibility.

5. In accordance with the Great Law of Peace, the Mohawk People abide by the principles of Power, Peace and Righteousness. These principles govern the direction of the Mohawk People of Kahnawake for the present and future generations;

11/27/95

6. The Mohawk People of Kahnawake have ultimate and exclusive power, right and jurisdiction to establish and maintain laws controlling the manufacture, possession, transportation, consumption and sale of alcoholic beverages within the Mohawk Territories of Kahnawake, and all matters related thereto.

7. The Mohawk People of Kahnawake have acknowledged the presence of alcohol within the Mohawk Territories of Kahnawake and have identified the need to control the manufacture, possession, transportation, consumption and sale of alcoholic beverages within the Mohawk Territories of Kahnawake.

8. Pursuant to Sections 81 and 85.1 of the *Indian Act* a Kahnawake Intoxicant By-law No. 8 was enacted on August 12, 1987 by virtue of Mohawk Resolution No. 08/1987-88. This was later amended to By-law 100, a Law Concerning the Use of Intoxicants in Kahnawake, dated November 30, 1992. Subject to the transitory provisions, this Law repeals and replaces these previous By-Laws.

9. This Law is enacted in accordance with the will of the Mohawk People of Kahnawake and is not dependent on or derived from the law or authority of any other government or authority.

#### PURPOSE

10. This Law is an expression of the will of the Mohawk People of Kahnawake regarding the manufacture, possession, transportation, and sale of alcoholic beverages within the Mohawk Territories of Kahnawake and is a means of enhancing and promoting peace, order and security of persons and property within the Mohawk Territories of Kahnawake.

## APPLICATION

11. This Law, and any regulations or rules derived from this Law, applies to the manufacture, possession, transportation, and sale of alcoholic beverages within the Mohawk Territories of Kahnawake, and any matters related thereto.

12. This Law applies to Mohawk and non-Mohawk persons.

## PARAMOUNCY

13 This Law is paramount over any other legislative act or regulation touching or concerning the manufacture, possession, transportation, and sale of alcoholic beverages, and any matters related thereto, insofar as it purports to relate to the Mohawk Territories of Kahnawake; including any act or regulation of the Parliament of Canada; of the legislative assembly of any province of Canada; and of any other governments.

## DEFINITIONS

14. For the purposes of this Law and any regulations or rules derived from this Law:

15. "Alcohol " means the product of distillation of any fermented liquid, whatever its origin, refined once or oftener, also synthetic ethyl alcohol and alcohol which is considered undrinkable;

16. "Alcoholic Beverage" means any one of the five varieties of beverages defined in this section namely, Alcohol, Spirits, Wine, Cider and Beer, and every liquid and solid containing Alcohol, Spirits, Wine, Cider and Beer and capable of being consumed by a human being;

17. "Bar" means a commercial establishment that derives its primary source of revenue from the sale of Alcoholic Beverages to the public for consumption on the premises;

18. "Beer" means the beverage obtained by the alcoholic fermentation in drinking water of an infusion or decoction of barley malt, hops or any other similar product, containing not less than .5% alcohol by volume;
19. "Board" means the Alcoholic Beverages Control Board established and empowered by this Law;
20. "Cider" means the beverage obtained by the alcoholic fermentation of fruit juice, containing not less than .5% alcohol by volume;
21. "Community Health Representative" means a health care worker who provides information and education and who participates in the implementation of projects and programs regarding health and safety matters;
22. "Court" means the Court of Kahnawake;
23. "Grocery" means a commercial establishment that derives its primary source of income from the sale of dry goods, dairy products and any other convenience items directly to the public;
24. "Immediate Family Member" means a parent, spouse, sibling or child;
25. "Kahnawake Mohawk Government" means the governing authority of the Mohawk People of Kahnawake, presently recognized to be the Mohawk Council of Kahnawake;
26. "Law" means this Communal Law on Alcoholic Beverages;
27. "Manufacture" means the creation or enhancement of an Alcoholic Beverage by a process of hand or machine;
28. "Minor" means a person who is less than eighteen (18) years of age;

29. "Mohawk People of Kahnawake" means the members of the community of Kahnawake;
30. "Occasional" means of, or pertaining to, incidental or infrequent occasions;
31. "Permit" means a permit issued by the Alcoholic Beverages Control Board;
32. "Possession" means to have an item in one's custody, care or control, including an item in a vehicle or building over which one has custody, care or control;
33. "Regulations" means the regulations enacted by the Board pursuant to this Law;
34. "Restaurant" means a commercial establishment, equipped with a full-sized kitchen, that derives its primary source of income from the sale of full course meals to the public;
35. "Retail" means to sell in small quantities directly to the consumer, for the consumer's own use;
36. "Sale" means the act of transferring the possession or ownership of an item in exchange for money or some other form of consideration;
37. "Social Organization" means a private establishment open to members only that has been recognized and sanctioned by the Mohawk People of Kahnawake and that operates on a non-profit basis;
38. "Spirits" means distilled alcoholic liquor;
39. "Territories" and "Mohawk Territories of Kahnawake" means:
  - (a) the lands now held under the mandate of the Mohawk People of Kahnawake, excluding the lands known as Doncaster;

(b) any and all lands that may be restored to the lands now held under the mandate of the Mohawk People of Kahnawake through the negotiation and resolution of land grievances, and;

(c) any and all lands that may be restored or added to the lands now held under the mandate of the Mohawk People of Kahnawake as the result of any other means;

40. "Transportation" means the act of moving an item, by any means, from one location to another;

41. "Wholesale" means to sell in bulk quantities directly to retailers for resale;

42. "Wine" the fermented juice of agricultural products used as an Alcoholic Beverage.

## PART II: THE ALCOHOLIC BEVERAGES CONTROL BOARD

43. There is established a permanent body to be known as the Alcoholic Beverages Control Board, with the powers, duties and functions provided in this Law.

### **MANDATE**

44. The mandate of the Board is to regulate the manufacture, possession, transportation, and sale of Alcoholic Beverages in accordance with this Law and the Regulations.

45. The Board shall fulfill its mandate in a manner that is fair, reasonable and equitable to all concerned. At all times, the Board shall conduct itself in a manner that best promotes the rights and interests of the Mohawk People of Kahnawake.

### **AUTONOMY**



46. Except as provided in this Law, the Board shall function independently and autonomously from the Kahnawake Mohawk Government and any other person, group or organization.

## ELIGIBILITY

47. Subject to the provisions of this Law, any Mohawk person who is at least eighteen (18) years old is eligible to be a member of the Board.

48. Persons not eligible to be a member of the Board include any person who has a direct or indirect financial interest in an enterprise that manufactures, distributes, transports or sells Alcoholic Beverages.

## STRUCTURE

49. The Board shall consist of seven (7) members, including a Chairperson, Vice-Chairperson, Secretary and Treasurer.

50. The Chairman, Vice-Chairman, Secretary and Treasurer shall be appointed by the Board from its own members.

## ELECTION

51. Members of the Board shall be elected by the Mohawk People of Kahnawake in accordance with the following procedures:

a) elections shall be conducted on the date established by an Electoral Officer;

b) eligible persons must have their nomination proposed and seconded by two (2) Mohawk persons;

c) nominations must be received by the Electoral Officer not less than fifteen (15) days prior to an election date;

d) the seven (7) persons with the most votes in the election shall become members of the Board.

52. An unlimited number of eligible persons may be nominated by the Mohawk People of Kahnawake for the position of Board member.

53. A committee will be established to prepare a summary of the duties, responsibilities and functions to be performed by Board members, to be made available to the Mohawk People of Kahnawake for their information and assistance in the election process.

54. All members of the Board, once duly elected, shall be presented to the Mohawk People of Kahnawake at a duly convened public meeting.

55. In the event a member or members of the Board resign, are removed or for any reason cease to function as Board members prior to the expiration of their term of office, the Electoral Officer may call a by-election to fill the vacancy or vacancies.

#### **CHAIRPERSON**

56. The Board, will, by majority vote, appoint one of its members as Chairperson. The Chairperson will preside over meetings of the Board and will ensure the Board follows the principles and procedures provided in this Law and the Regulations.

#### **VICE-CHAIRPERSON**

57. The Board will, by majority vote, appoint one of its members as Vice-Chairperson. The Vice-Chairperson shall act as Chairperson during meetings of the Board when the Chairperson is absent or unable to act.

#### **TERM OF OFFICE**

58. All members of the Board shall serve a term of office of two (2) years.

59. Upon expiry of a member's term of office, subject to the other provisions of this Law, the member is eligible to be re-elected for another term of office. There is no limitation on the number of consecutive terms of office a member may serve.

#### REMOVAL FROM OFFICE

60. A member of the Board may be removed from office prior to the expiry of his/her term of office by unanimous resolution of the other members.

#### RESIGNATION

61 A member of the Board may resign from office prior to the expiry of his/her term of office by giving a written notice to the Board at least thirty (30) days prior to the date on which the resignation is to be effective.

#### VACANCY

62. In the event a member is removed, resigns or is unable to continue performing his/her duties for any reason:

- a) the member's position, will, by resolution of the Board, be declared vacant and will be filled at the next election;
- b) a notice of the vacancy, and the reasons for the vacancy, will be made available to the Mohawk People of Kahnawake.

#### CONFLICT OF INTEREST

63. No Board member may perform any duty, have any interest, pursue any activity or place himself in any situation that is in conflict with his duties and obligations as a member of the Board. If he does so, he shall be removed from office in accordance with this Law.

64. A Board member shall abstain from any discussions or decision making processes concerning an Immediate Family Member.

### MEETINGS

65. The Board will meet at least once every thirty (30) days or as may be necessary.

66. Meetings or portions of meetings of the Board may, at the Board's discretion, be closed to the public.

### QUORUM

67. Five Board members make up a quorum. In the case of a tie, the person presiding over the session shall have a casting vote.

### REMUNERATION

68. Members of the Board will receive no remuneration for any services associated with their office.

### ADMINISTRATION

69. The Board will employ the support staff and will retain the professional assistance that is required to fulfill its mandate.

70. Administration costs collected by the Board pursuant to this Law shall be applied to the Board's operating costs.

### BY-LAWS

71. By-laws for internal management of the Board shall be adopted by resolution of the Board.

## REGISTRY

72. The Board shall maintain an office and registers for Permit applications and decisions of the Board, as provided for in the Law. The registers shall be public and open for consultation during office hours. The Board shall also keep, for the purposes of the Law, records relating to all Permits in force and to every application for a Permit regarding which no decision has been made.

## FISCAL YEAR

73. The fiscal year of the Board is from April 1 to March 31.

## INDEMNITY FOR MEMBERS

74. The Board shall use its best efforts to obtain insurance to indemnify any Board member who incurs liability while acting in good faith and within the scope of his mandate.

## FUNCTIONS AND POWERS OF THE BOARD

75. The Board shall exercise functions which include:

- (a) issuing, suspending or revoking Permits granted by the Board under this Law;
- (b) establishing the conditions attached to Permits and monitoring their use;
- (c) acting as liaison with similar authorities in other jurisdictions;
- (d) enacting and administering all Regulations contemplated by this Law.

76. The Board has exclusive original jurisdiction:

- (a) to rule on any matter concerning the Permits prescribed under this Law;
  - (b) to establish and collect the administration costs;
77. Decisions of the Board regarding granting, suspending, canceling, or amending of Permits 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.
78. The Board may review or revoke any decision it has rendered:
- (a) when new information is discovered which, if it had been known in time, might have led to a different decision;
  - (b) where a party was unable, for a good reason, to be heard at the time the decision was made;
  - (c) where a defect in the Board's procedure could make the decision invalid.
79. If an applicant provides false or misleading information to the Board the applicant will be refused and will not be allowed to re-apply to the Board for a period of two (2) years.
80. Any disputes arising out of a decision of the Board must be submitted for resolution pursuant to the Kahnawake Communal Arbitration Procedure.

## EMERGENCY ORDERS

81. The Board may on an emergency basis and for a period of time not to exceed five (5) business days, by written order, directive or notice, prohibit the sale and transportation of Alcoholic Beverages until such emergency order can be considered by the Board which may in its discretion, terminate or extend such order for any length of time it deems necessary, or may issue emergency rules, Regulations, directions or orders concerning the sale of Alcoholic Beverages which will be valid during the stated emergency period.

## PART III: ALCOHOLIC BEVERAGES

### PROHIBITION

82. The manufacture, possession, transportation, and sale of Alcoholic Beverages is forbidden in the Territories except as permitted by this Law and the Regulations.

83. Notwithstanding any other provision of this Law, no person under the age of eighteen (18) years may manufacture, possess, transport, or sell Alcoholic Beverages in the Territories.

### MANUFACTURE

84. A person may manufacture Beer, Cider and Wine in his or her residence, provided the Beer, Cider or Wine is intended for personal consumption only and is not offered for sale.

85. The Board may issue a Permit to a person for the purpose of manufacturing Alcoholic Beverages to be offered for sale.

### POSSESSION

86. A person may possess Alcoholic Beverages in the Territories:

- (a) in an establishment in possession of a valid Permit issued under the Law;
- (b) in a private residence, provided the Alcoholic Beverages are kept for the personal consumption of the occupants of the private residence and are not intended for resale;
- (c) in churches, chapels and their dependencies which may possess Wine for ceremonial purposes;
- (d) in a storage facility controlled by the Kahnawake Peacekeepers where Alcoholic Beverages are stored following a seizure;
- (e) in a place designated by this Law or by the Board.

## TRANSPORTATION

87. The following persons may transport Alcoholic Beverages within the Territories:

- (a) the holder of a valid Permit issued under this Law, or a person authorized by the holder of a valid Permit;
- (b) a person operating a vehicle transporting Alcoholic Beverages directly to or from a location described in subsection 86, or;
- (c) a person operating a commercial vehicle licensed by another jurisdiction and specifically authorized by the Board to transport Alcoholic Beverages within the Territories.

## SALE

88. Only holders of a valid Permit issued by the Board are permitted to sell Alcoholic Beverages within the Territories.



89. The holder of a valid Permit is entitled to refuse to sell Alcoholic Beverages to any person.

#### PART IV: PERMITS

##### PERMITS

90. The holder of a Permit issued by the Board must strictly comply with the terms and conditions of the Permit and any other terms and conditions imposed by the Board.

91. The Board may issue eight (8) different classes of Permits, namely:

- (a) Restaurant;
- (b) Bar;
- (c) Retail;
- (d) Grocery;
- (e) Social Organization;
- (f) Wholesale;
- (g) Manufacture, and
- (h) Occasional.

##### RESTAURANT

92. A Restaurant Permit entitles the holder to sell Alcoholic Beverages to patrons of a Restaurant to be consumed with a meal and entitles the Permit holder's patrons to transport Wine to the Restaurant for the purpose of personal consumption with a meal;

93. The Board shall determine by Regulation the number of Restaurant Permits to be issued under this Law.

#### **BAR**

94. A Bar Permit entitles the holder to sell Alcoholic Beverages to patrons of the Bar for consumption on the premises.

95. The Board shall determine by Regulation the number of Bar Permits to be issued under the Law.

#### **RETAIL**

96. A Retail Permit entitles the permit holder to sell unopened containers of Spirits to the public.

97. The Board shall determine by Regulation the number of Retail Permits to be issued under this Law.

#### **GROCERY**

98. A Grocery Permit entitles the holder to sell unopened containers of Beer, Cider and Wine to customers of the Grocery.

99. The Board shall determine by Regulation the number of Grocery Permits to be issued under this Law.

#### **SOCIAL ORGANIZATION**

100. A Social Organization Permit entitles the holder to sell Alcoholic Beverages to members of the Social Organization and their guests for consumption within the entirety of the premises.

101. A Social Organization Permit will affirm that the Social Organization is recognized and sanctioned by the Mohawk People of Kahnawake and operates as governed by its own Constitutional Guidelines and By-laws and that the Social Organization's regulations are deemed to be pursuant to this Law.

102. Social Organization Permits are exempt from any administration costs provided by this Law.

103. The Board shall determine by Regulation the number of Social Organization Permits to be issued under this Law.

#### **WHOLESALE**

104. A Wholesale Permit entitles the holder to sell Alcoholic Beverages to the holders of valid Retail Permits.

105. The Board shall determine by Regulation the number of Wholesale Permits to be issued under this Law.

#### **MANUFACTURE**

106. A Manufacture Permit allows the permit holder to manufacture and sell Alcoholic Beverages pursuant to the Regulations.

107. The Board shall determine by Regulation the number of Manufacture Permits to be issued under this Law.

#### **OCCASIONAL**

108. An Occasional Permit entitles the holder to sell or serve Alcoholic Beverages for consumption at the place and during the times indicated on the Permit;

109. An Occasional Permit may be issued for a period of no more than twenty-four (24) hours.

110. The Board shall determine, in its sole discretion, the number of Occasional Permits to be issued at any given time; the times during which the Occasional Permit will be valid; and such other terms and conditions as the Board may determine are appropriate.

#### ELIGIBILITY AND REQUIREMENTS FOR ALL PERMIT APPLICATIONS

111. The Board may issue a Permit to a natural person, a corporation, a partnership or a Social Organization.

#### CORPORATIONS AND PARTNERSHIPS

112. A corporation or partnership may only obtain a Permit if each of the directors or partners fulfills the conditions listed in Sections 113 and 114.

#### NATURAL PERSONS

113. To be eligible to apply for a Permit, a natural person must:

- (a) be at least twenty-one (21) years old;
- (b) be a Mohawk person;
- (c) be the owner or the lessee of the establishment for which the Permit is sought or be specifically authorized in writing by the owner or the lessee of the establishment to have Alcoholic Beverages sold in the establishment;
- (d) have arranged the establishment in accordance with the standards prescribed by the laws applicable in the Territory; and
- (e) pay the administration costs determined in accordance with the Regulations.

114. A natural person must, when applying for a Permit, other than an Occasional Permit:

(a) provide a written application in the form described in the Regulations stating his name, birth date, social insurance number, address and telephone number;

(b) provide proof that he fulfills the conditions provided in Section 113;

(c) indicate the place where the establishment is located and the room or terrace where he intends to sell or serve Alcoholic Beverages, and provide a photograph and/or video cassette thereof;

(d) provide proof of a fire inspection certificate from the Kahnawake Fire Brigade in accordance with the National Fire Prevention Safety Code;

(e) provide proof of third person liability insurance in the amount of one million dollars (\$1,000,000.00) for a one year period from the date of the Permit;

(f) provide a sanitation certificate from a Community Health Representative;

(g) provide any information regarding convictions of indictable offences inside or outside the Territory.

## **SOCIAL ORGANIZATIONS**

115. A Social Organization must, when applying for a permit:

(a) provide a written application in the form described in the Regulations, stating the name, address and telephone number of the Social Organization;

(b) provide information showing that it meets the definition of "Social Organization" pursuant to this Law;

(c) provide a copy of its regulations insofar as they pertain to the sale of Alcoholic Beverages;

(d) provide proof of a fire inspection certificate from the Kahnawake Fire Brigade in accordance with the National Fire Prevention Safety Code;

(e) provide proof of third person liability insurance in the amount of one million dollars (\$1,000,000.00) for a one year period from the date of the Permit;

(f) provide a sanitation certificate from a Community Health Representative;

116. In the event the regulations of a Social Organization, insofar as they pertain to sale of Alcoholic Beverages, are established, amended, revoked or otherwise revised, copies of the new regulations shall be provided to the Board at the earliest opportunity.

#### **OCCASIONAL PERMIT**

117. A person applying for an Occasional Permit must fulfill the conditions specified in Section 113.

#### **REVIEW PROCEDURE**

118. On receipt of a Permit application, the Board must post a public notice advising the Mohawk People of Kahnawake of the application and allowing ten (10) days for input from any interested person.

#### **DECISION OF THE BOARD**

119. Based on all the information the Board will make a decision on granting a Permit, refusing a Permit, or granting a Permit with conditions.

120. The Board must refuse to issue a Permit if it considers that:

(a) the issue of the Permit will be against the public interest or may disturb the public peace as defined in Section 139; or that

(b) the establishment does not comply with the standards prescribed by the laws applicable in the Territory; or that

(c) the applicant has not fulfilled any other requirements of the Law or Regulations.

121. In the event the Board refuses an applicant, the Board must give their reasons, in writing, to the applicant.

122. There will be a waiting period of six (6) months after the original decision of the Board before any unsuccessful applicants can reapply for any other Permit.

#### **ISSUE, DURATION OF PERMITS AND PAYMENT OF ADMINISTRATION COSTS**

123. Every Permit issued by the Board, other than Occasional Permits, must be renewed annually.

124. The Board shall indicate in a Permit issued by it, where applicable, the place where the establishment is situated, in which room or on which terrace that Permit may be used and the date of payment of the administration costs.

125. A Permit must bear the signature of four (4) Board Members.

126. A Permit remains in force until it is revoked or expires.

127. The permit holder shall pay the annual administration costs determined in accordance with the Regulations.

128. Not less than sixty (60) days before the anniversary date of the issue of a Permit, the Board shall send to the holder a notice informing him of the date on which the Permit becomes renewable and the administration costs become payable to maintain the Permit in force.

129. If the Board does not receive the application for renewal and the administration costs by the anniversary date of the issue of the Permit, the holder will automatically lose his Permit without further warning and shall have to re-apply to the Board as if he had never had a Permit.

130. The Permit holder must provide annual renewal of the following:

- (i) liability insurance of one million (\$1,000,000.) dollars;
- (ii) fire inspection certificate from the Kahnawake Fire Brigade; and
- (iii) sanitation certificate from a Community Health Representative.

#### **CONDITIONS ATTACHED TO A PERMIT**

131. A Permit must be used only within the days and times specified by the terms of the Permit.

132. No permit holder may tolerate a person remaining in his establishment for more than thirty (30) minutes after the time the Permit must cease to be used if the person is consuming Alcoholic Beverages.

133. In an establishment where a Permit is used, it is forbidden to sell or serve Alcoholic Beverages elsewhere than in the place designated by the Permit.

134. The Alcoholic Beverages which the permit holder possesses for sale to his customers or guests must, while in the establishment where he carries on his business, be kept in the containers in which they were delivered to him.



135. Permit holders may not refill any containers in which Alcoholic Beverages were originally purchased or delivered to him.

136. A permit holder must keep his Permit posted, in public view, in the room or on the terrace where the Permit is used.

137. The holder of a Permit must keep posted a price list of the Alcoholic Beverages he sells. The holder of a restaurant Permit may put that price list on a menu.

138. The permit holder must not use his Permit in a manner that will disturb the public peace as defined below in Section 139.

139. The Board, in the performance of its functions and the exercise of its powers, in cases involving the public peace, may, among other factors, take into account:

(a) any noise, gathering or assembly which results or may result from the operation of the establishment that may disturb the peace in the neighborhood;

(b) the place where the establishment is located.

140. A permit holder shall:

(a) serve Beer in a manner permitting the patron to identify, on the container, the brand of Beer he ordered with the exception of draft Beer;

(b) serve any other Alcoholic Beverage in its original container bearing the brand, and open it in the presence of the patron who ordered it.

141. No Permit may be used by a person other than its holder.

142. A permit holder may not give, sell, bequeath or otherwise transfer a Permit to another person, without the express written permission of the Board.

143. No permit holder may, even inside his establishment, use his Permit in a place other than that specified in his Permit.

### MINORS

144. A permit holder shall not sell Alcoholic Beverages to a Minor. A permit holder shall not sell Alcoholic Beverages to a person of full age if he knows that person is buying them for a Minor.

145. A permit holder shall not admit a Minor to his establishment, allow him to present or to participate in a show, or employ him, with the exception of grocery permit holders and restaurant permit holders. All permit holders must not allow Minors to sell and/or serve Alcoholic Beverages.

146. However, a permit holder may admit a Minor to or allow his presence:

- (a) on a terrace if the Minor is accompanied by his father or mother or the person having parental authority;
- (b) in a room or on a terrace, only so that the Minor may cross it;
- (c) in a room or on a terrace access to which is restricted to a group of persons at a reception, if the Minor is a member of that group;
- (d) in a designated area as determined by Regulation.

147. Any person may be required to prove that he is not a Minor by an identification with a photograph when he wishes to purchase Alcoholic Beverages or, to be admitted to an establishment serving Alcoholic Beverages.

148. A Minor shall not:

- (a) purchase Alcoholic Beverages for himself or for another person;
- (b) be found, without a legitimate excuse, in a bar;
- (c) falsely represent that he is a person of full age to purchase Alcoholic Beverages or to be admitted to a bar;
- (d) accept Alcoholic Beverages purchased for himself.

149. In proceedings for contravention of this section, the burden is on the defendant to prove that, at the time of the offence, he was of full age.

## PART V: SANCTIONS AND ENFORCEMENT

### PENAL PROVISIONS

150. Any person, who, without a valid Permit:

- (a) solicits or receives an order for Alcoholic Beverages;
- (b) keeps or exposes Alcoholic Beverages with intent to sell;
- (c) transports Alcoholic Beverages;
- (d) serves Alcoholic Beverages in contravention of this Law;
- (e) sells, or otherwise distributes, Alcoholic Beverages;

is guilty of an offence and liable to a fine up to two-thousand dollars (\$2000.00) and /or serve a term in a correctional facility up to six (6) months in the Territory or outside the Territory, and/or to an equivalent term of community service. The name(s) of the convicted person(s) may be printed in a local newspaper chosen by the Board.

151. Any person who, being the holder of a Permit:

- (a) sells any Alcoholic Beverage of a kind other than that which his Permit authorizes him to sell;
- (b) sells Alcoholic Beverages which his Permit authorizes him to sell, but to a person other than one to whom his Permit, the Law or Regulations authorizes him to sell them;
- (c) keeps or allows to be kept, elsewhere than in his residence and for his personal use, Alcoholic Beverages other than that which he is authorized to sell under his Permit ;

is guilty of an offence and liable to a fine up to two thousand dollars (\$2000.00), and /or to serve a term in a correctional facility up to six (6) months in the Territory or outside the Territory, and/ or to an equivalent term of community service.

152. Any person who, being the holder of a Permit:

- (a) sells, serves or allows to be consumed any Alcoholic Beverages that his Permit authorizes him to sell, serve or allow to be consumed, but in any place, or in any manner, other than his Permit authorizes him to sell;
- (b) sells, serves or allows to be consumed any Alcoholic Beverages that his Permit authorizes him to sell, serve or allow to be consumed, but outside the days or hours when he may use that Permit;
- (c) sells any Alcoholic Beverages that his Permit authorizes him to sell;
  - (i) to any minor, or to a person for consumption by a minor;
  - (ii) to any person in a state of drunkenness;

(iii) to any person other than a minor, knowing that the Alcoholic Beverages is so bought for a person obviously under the influence of Alcoholic Beverages and is intended to be drunk by such person;

(d) does not keep that Permit constantly posted in view of the public in the room or on the terrace where he uses it;

(e) contravenes a Regulation made under this Law;

is guilty of an offence and liable to a fine not exceeding two thousand dollars (\$2000.00) and /or to serve a term in a correctional facility in the Territory or outside the Territory, and/or to an equivalent term of community service.

153. Any person who, without lawful excuse, is found in a room where Alcoholic Beverages are sold without a Permit is guilty of an offence against this Law and liable to a fine no less than fifty dollars (\$50.00) and not exceeding two hundred and fifty dollars (\$250.00).

## ENFORCEMENT

154. The Peacekeepers of Kahnawake have sole authority to enforce this Law and Regulations.

155. Any Peacekeeper of Kahnawake may,

(a) where he has reasonable cause to believe that Alcoholic Beverages are being sold or transported in the Territory contrary to this Law or the Regulations, in containers, whether or not they are containing Alcoholic Beverages, open such containers with all necessary assistance and even by force in case of resistance, and examine the contents thereof:

(i) where he has reasonable cause to believe that such Alcoholic Beverages, by reason of their quantity, are being transported to be sold;

(ii) if they are addressed to a person who does not hold a Permit, for the sale of Alcoholic Beverages, and where there is reasonable cause to believe that such person has already been convicted of an offence under this Law; or

(iii) if, according to the circumstances under which the Alcoholic Beverages are transported, he has reasonable cause to believe that they are being so transported to be sold without a Permit;

(b) where he has reasonable cause to believe that Alcoholic Beverages are kept or sold in contravention of this Law, enter any place with a search warrant, even by force, search such place and take any measure necessary for the discovery of such Alcoholic Beverages;

(c) where he or the Board has reasonable cause to believe that Alcoholic Beverages are kept, transported or sold in contravention of this Law, enter any place with a search warrant, and seize any Alcoholic Beverages otherwise than as herein above indicated, in addition to any other items directly related to the alleged contravention of this Law to ensure the owner's business ceases, including such things as customer accounts, refrigerators, cash registers, funds traded, all at the discretion of the Court.

156. When Alcoholic Beverages and other items are seized they shall be stored in a Peacekeeper storage facility and the Peacekeepers shall have custody thereof until the Court has disposed of them by a order.

157. When Alcoholic Beverages are transported in contravention of this Law, and are seized in a vehicle used for such transportation, the Peacekeepers may detain the vehicle, and use it, without charge, to transport and place in the custody of the Peacekeepers the Alcoholic Beverages seized and the containers containing them. Furthermore, the Peacekeepers may seize the vehicle and place it in the custody of the Peacekeepers until an order is rendered by the Court.

### **CONFISCATION**

158. When Alcoholic Beverages are seized under this Law, the Court may order them confiscated, upon proof of any contravention of the Law.

159. The Peacekeepers of Kahnawake shall have custody of all seized vehicles thereof until the Court has disposed of them by order.

160. Every prosecution under this Law must begin within six (6) months from the date the offence is committed.

### **SUSPENSION, VARIATION AND CANCELLATION OF PERMITS**

161. In the event the Board learns or is advised by any person that the holder of a Permit issued pursuant to this Law:

(a) has obtained the Permit as the result of false or misleading representations;

(b) no longer fulfills one of the conditions provided by Section 113, 114, and 115;

(c) has been convicted of an offence under this Law;

(d) has been convicted of an indictable offence or felony inside or outside the Territory.

the Board shall immediately forward a written notice to the Permit holder advising of the particulars of the alleged violation and requesting a written response be provided to the Board within ten (10) days.

162. In the event the Permit holder fails to respond to the Board within ten (10) days, the Board may suspend, vary or cancel the Permit without further notice to the Permit holder.

163. In the event the Permit holder responds to the Board admitting the violation alleged, the Board shall:

(a) suspend, vary or cancel the Permit, or

(b) give the Permit holder an opportunity to correct the violation within a specific period of time and provide proof to the Board of the correction.

164. In the event the Permit holder having been given the opportunity to correct the violation fails to do so, the Board shall suspend, vary or cancel the Permit without further notice to the Permit holder.

165. In the event the Permit holder responds to the Board within ten (10) days denying the alleged violation, the Board shall conduct a hearing into the matter.

166. The hearing conducted by the Board shall follow the procedures established by the Board by regulation. The hearing procedures must include, but are not limited to, the following provisions:

(a) the Permit holder has the right to be represented by legal counsel;

(b) the Permit holder has the right to be present at the hearing; to hear all evidence against him and to respond, orally or in writing, to all accusations made against him;



(c) the Board will only make a finding against the Permit holder if, in the opinion of the Board, the evidence is clear and convincing;

(d) the Board will provide the Permit holder with its decision in writing;

(e) the decision of the Board will be entered into the Board's Registry.

167. At the conclusion of the hearing the Board shall:

(a) dismiss the allegations;

(b) suspend, vary or cancel the Permit, or;

(c) take any other action that the Board decides is appropriate under the circumstances.

168. The Board may assess the costs of the hearing against the Permit holder.

169. Notwithstanding the foregoing, in the event the Board is convinced that there is a serious and urgent reason, the Board may order the immediate suspension of a Permit pending a hearing.

170. Any changes to an establishment to which a Permit has been issued must be brought to the attention of the Board by the Permit holder. Upon receiving such notice, the Board must immediately re-evaluate the validity of the Permit.

#### **THE COURT OF KAHNAWAKE**

171. The Court shall have sole original jurisdiction to prosecute any offenses under this Law.

PART VI: REGULATIONS

## REGULATIONS

172. The Board shall make Regulations:

- (a) determining the amount of the administration 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 terraces for purposes of fire safety and sanitation;
- (c) prescribing the standards it must apply to fix the number 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 of 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 of 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 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 measure useful to the application of this Law.

## PART VII: GENERAL MATTERS

### TRANSITORY PROVISIONS

173. Notwithstanding any other provision of this Law, all holders of tolerance permits issued under By-Law No. 100 will automatically receive Permits issued by the Board. These tolerance permit holders must provide to the Board all information as stipulated in the application process provided in this Law. The tolerance permits will be valid until the date on which the Board issues Permits pursuant to this Law or one hundred twenty (120) days following the first meeting of the Board, whichever comes first.

174. Notwithstanding any other provision of this Law, the provisions set out in the Sections entitled "Penal Provisions", "Enforcement", and "Confiscation" will not come into effect until one hundred twenty (120) days following the first meeting of the Board and for that period of time; the provisions of By-Law 100, a Law Concerning the Use of Intoxicants in Kahnawake, will remain in full force and effect.

#### GENERAL

175. All references in this Law to the male gender shall be interpreted to include the female gender.

176. If any part of this Law is found by the Court to be invalid it may be severed and will not invalidate the Law in its entirety.

177. This Law may only be amended by first gaining the approval of the Mohawk People of Kahnawake.

178. Further to the will of the Mohawk People of Kahnawake, this Law comes into force and effect on the date it is affirmed by resolution of the Kahnawake Mohawk Government.

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