

November 21, 2017

KANIEN'KEHÁ:KA OF KAHNAWÀ:KE LAW

K.R.L. c. M-1

[Enacted by MCR # 51/2003-2004 on 10 Kentenhkó:wa/November,2003]
[Came into force through MCR #41/2004-2005 with the exception of section 7.2, on
27 Seskehkó:wa/September, 2004]
[Amended by MCR # 2007-2008 on the 2 Onerahtókha/April 2007]
[Amended by will of the people MCR # _____ on _____]

OLD PREAMBLE

We are the Kanien'kehá:ka of Kahnawà:ke. We are a community within the Kanien'kehá:ka Nation and the Rotinonhsónnión:we and as such are Onkwehonwe who possess a fundamental and inherent right of self-determination given to us by the Creator.

As Onkwehonwe, we have the right to maintain and promote our Kanien'kehá:ka identity including our culture, traditions, language, laws and customs.

As Onkwehonwe, we have the collective right to determine our own membership. This right is fundamental to our survival.

Our rights as Onkwehonwe have been affirmed in the Two Row Wampum, in other treaties we have entered into with foreign governments and in international covenants and declarations.

We have consistently and historically asserted both our rights as Onkwehonwe and the rights set out in our treaties with foreign governments. These rights cannot be extinguished, diminished or affected without our consent.

We have consistently and historically exercised the right to determine our own membership. In recent times, we have been compelled to adopt measures that were necessary to ensure our continued survival as a Kanien'kehá:ka community.

Comment [SJ1]: CWC

The old preamble seems to be better in line with this law. It could be used to replace the other preamble or the two could be combined.

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This Law is another link in the unbroken chain of our historic struggle to survive as Kanien'kehá:ka of Kahnawà:ke. This Law is the result of a lengthy period of discussion and consultation within our community. It is an expression of the will of the Kanien'kehá:ka of Kahnawà:ke and is intended to reflect the values and principles described by the Elders of our community in their statement on membership: Entsitehwahárahne.

This Law is an affirmation of our Indigenous and Treaty rights. This Law is essential if we are to survive and to thrive as Indigenous Peoples and as Kanien'kehá:ka of Kahnawà:ke.

The rights on which this Law is based are collective rights belonging to the Kanien'kehá:ka of Kahnawà:ke. However, the application of this Law will respect the fundamental human rights of all individuals in accordance with the principles of dignity and compassion inherent in Kanien'kehá:ka culture, values and Traditional Law, and in accordance with international principles of human rights and natural justice.

This Law is not intended to take away or diminish any and all rights of the People of the Kanien'kehá:ka Nation or the Rotinohsonnión:we.

This Law is a step toward the goal of completely replacing foreign laws and authorities that have been imposed upon us without our consent and toward the restoration of Traditional Law within Kahnawà:ke.

This Law is a declaration of our resolve to unite our strengths to achieve this common goal and by this measure we will strive to ensure the peace and security of future generations of our People and our Territories.

We recognize that we have been harmed by foreign governments' attempts to undermine our will and ability to survive by dividing our community. We reject the imposition of the Indian Act and of other foreign laws that have presumed to define the principles upon which the membership of our community will be determined. We reject all efforts to assimilate and extinguish our community under the guise of absolute individualism.

By enacting this Law, we are fulfilling our responsibility to defend our community and our Nation from external threat, and in doing so are securing for future generations

Comment [SJ2]: CWC

If the old preamble is used it is suggested that this part of the preamble be deleted as it refers to external principles of laws which may in fact be contrary to certain principles in this Law.

Comment [JP3]: Legal Services recommend leaving this part in for two reasons:

International principles of Human Rights would include the United Nations Declaration of Right of Indigenous Peoples (UNDRIP).

S33(1) of UNDRIP states:

Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

s.35 states:

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

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the right to survive and to continue living – proudly – as Kanien'kehá:ka of Kahnawà:ke.

We are the Kanien'kehá:ka of Kahnawà:ke. We are a community within the Kanien'kehá:ka Nation and are Onkwehonwe who possess a fundamental and inherent right of self-determination given to us by the Creator.

We have inherent, Aboriginal¹ and treaty rights, and other rights and freedoms that are recognized and affirmed in the *Constitution Act, 1982*, which includes the inherent right of self-government and jurisdiction over our lands, people and resources.

We have consistently and historically asserted both our rights as Onkwehonwe as affirmed in the Two Row Wampum and the rights set out in our treaties with foreign governments. These rights cannot be extinguished, diminished or affected without our consent.

Given our inherent and Aboriginal right of self-government, we have the right to govern ourselves in relation to matters that are integral to our unique culture, identity traditions, language and institutions and with respect to our connection to our people, land and resources.

We have consistently and historically exercised the right to determine who is a Kanien'kehá:ka of Kahnawà:ke. This right is fundamental to our survival as a Kanien'kehá:ka community.

This Law is an affirmation of our inherent, Aboriginal and Treaty rights to establish and maintain our own process to determine who is a Kanien'kehá:ka of Kahnawà:ke and to maintain a Kahnawà:ke Kanien'kehá:ka Registry.

This Law is an expression of the will of the Kanien'kehá:ka of Kahnawà:ke and is intended to reflect the values and principles described by the Elders of our community in their 1999 statement on membership titled Entsitehwahárahne.

TITLE

1.1 The title of this Law is the Kanien'kehá:ka of Kahnawà:ke Law.

¹ Aboriginal is not a term used by the Kahnawà:ke and is used here in reference to *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11.

Comment [SJ4]: CWC

If newer preamble is kept, it is recommended that the reference to the Canadian legislation be excluded. If the community wishes to keep this reference in, put it in the text and not in a footnote – preambles do not have footnotes.

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PURPOSE

- 2.1 This Law provides the criteria to apply for recognition as a Kanien'kehá:ka of Kahnawà:ke and to establish the responsibilities associated with said recognition, and to determine the criteria for the suspension or revocation of the entitlements associated with being recognized as a Kanien'kehá:ka of Kahnawà:ke.

JURISDICTION

- 3.1 This Law is an exercise of the collective rights of the Kanien'kehá:ka of Kahnawà:ke to determine who is recognized as a Kanien'kehá:ka of Kahnawà:ke. This Law is paramount to and supersedes the laws, regulations and policies of the government of Canada, or any other government, concerning recognition of who is a Kanien'kehá:ka of Kahnawà:ke, or matters related thereto.

DEFINITIONS

- 4.1 For the purposes of this Law and the Regulations,

"Administrative Tribunal" means the adjudicator or panel of adjudicators established under the *Kahnawà:ke Justice Act* charged with reviewing decisions of the administrative branch of government and where appropriate to correct an error;

"Adoption" means the legal acceptance of a child of another person as one's own child,

"Age of Majority" means eighteen (18) years of age,

"Common-Law Relationship" means a conjugal relationship, not solemnized by a marriage ceremony, law or custom, between two persons who live together and publicly refer to themselves as partners or spouses,

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"Community Ties" means a person's overall participation in community events, volunteer activities, charitable works, positive contribution to the Kanien'kehá:ka of Kahnawà:ke,

"Dependent Person" means a person who has reached the Age of Majority but who, as the result of physical or mental limitations, requires mandated care to maintain their quality of life,

"Family Ties" means the bond that exists between a person and their spouse, sibling, parent/child, grandparent/grandchild who resides in the Territory,

"Guardian" means any person who is under a legal duty to provide for the Minor Child or Dependent Person,

"Iah te-Onkwehonwe " means a person who has no Kanien'kehá:ka Lineage or **Onkwehonwe** Lineage,

"Kahnawà:ke Kanien'kehá:ka Registry" means the list of Kanien'kehá:ka of Kahnawà:ke maintained by the Registrar in accordance with this Law and, for greater certainty, does not mean any lists kept by the Department of Indigenous and Northern Affairs (Canada) or any other government,

"Kahnawà:ke Mohawk Registry" means the list of persons created in accordance with the 1981 Moratorium and the 1984 Kahnawà:ke Mohawk Law concerning Membership,

"Kanien'kehá:ka Great-Grandparent" means a great-grandparent who 1) has Kanien'kehá:ka lineage or 2) was a Mohawk on the Kahnawà:ke Mohawk Registry or 3) was/is a member or recognized as a Kanien'kehá:ka of Kahnawà:ke on the **Kahnawà:ke Kanien'kehá:ka Registry**,

"Kanien'kehá:ka Lineage" means direct descent from a Kanien'kehá:ka ancestor, to a maximum of four generations, verified by proof acceptable to the Registrar and, if necessary, by the Administrative Tribunal, the Court of Kahnawà:ke or the Kahnawà:ke Court of Appeal, as the case may be,

"Kanien'kehá:ka of Kahnawà:ke" means a person verified and recognized as a Kanien'kehá:ka of Kahnawà:ke, according to the criteria and procedures in this Law and the Regulations, provided the person's recognition has not been revoked,

Comment [SJ5]: CWC

The consensus regarding this definition and adding the Mohawk term for being of two cultures is difficult to apply in practice and may end up being unworkable for the Registrar. Requires Registrar to go back more generations and may lead to inconsistent results. Furthermore, it places a higher burden on those with K of K lineage than those with Onkwehonwe lineage.

Are there alternatives:

1. Half/full/none?
- 2.

Comment [JP6]: The following wording has been suggested:

"Kanien'kehá:ka Great-Grandparent" means someone who possesses no less than twenty-five (25%) percent Onkwehonwe or Kanien'kehá:ka Lineage directly from one or both of their parents.

This 25% would apply **ONLY** to qualify the Great Grandparent **NOT** the applicant who would need to qualify by having no less than 4 Kanien'kehá:ka Great-Grandparent

Would this definition replace (1) only or is it meant to be the complete definition and (2) and (3) would be omitted?

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"Kanien'kehá:ka Territory of Kahnawà:ke" or "Territory" means:

- a) the lands under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke, including the Kahnawà:ke interest in Tioweró:ton (Doncaster);
- b) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke through the negotiation and resolution of land grievances,
- c) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke as a result of any other means, and
- d) lands, which are returned to, Kahnawà:ke as lands within the meaning of subsection 91(24) of the *Constitution Act*, 1867.

"Marriage" means a binding union between two consenting persons with legal capacity that is solemnized by ceremony, law or custom and that gives rise to duties and responsibilities that are enforceable in law,

"Minor Child" means a person who has not yet reached the Age of Majority;

"Onkwehonwe" for the purposes of this Law means a person of an Indigenous Nation of what is currently known as Canada and the continental United States of America, including the Inuit,

"Onkwehonwe Lineage" means direct descent from at least four (4) Onkwehonwe great-grandparents, verified by proof acceptable to the Registrar and, if necessary, by the Administrative Tribunal, the Court of Kahnawà:ke or the Kahnawà:ke Court of Appeal, as the case may be,

"Ordinarily Resident" means that a person maintains their permanent home in Kahnawà:ke and includes persons who may be absent for a period of time but who returns to Kahnawà:ke on a regular basis from their place of employment, training or schooling and also includes persons who do not Reside in Kahnawà:ke due to housing shortages,

Comment [SJ7]: CWC

Are there thresholds to these terms? (namely the great grandparents)

Is so what are they and are they workable definitions?

Note: remember other Nations/communities do not have the same record keeping and historical records as here.

Drafting Team Comment: Whatever is used for the Kanien'kehá:ka great-grandparent criteria for consistency would apply to the Onkwehonwe great-grandparent..

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"Regulation" means any regulation enacted pursuant to this Law, by the Mohawk Council of Kahnawà:ke;

"Reside" means one of the places where one ordinarily lives or has their home,

"Respect for Mother Earth" refers to a concept, which mirrors our attachment to earth as our supreme giver of life; as giver of all our nourishment and our needs. The symbolic term Mother Earth is central to our belief and life system and plays an integral role in Kanien'kehá:ka society.

REGISTRAR

Upon the enactment of this Law, the Mohawk Council of Kahnawà:ke will, after posting the position, appoint a qualified Kanien'kehá:ka of Kahnawà:ke who meets the specified criteria to be the Registrar for the purposes of this Law.

5.1 The Registrar's appointment will be effective until:

- a) it is revoked, with just cause, by the Mohawk Council of Kahnawà:ke,
- b) the Registrar resigns, or
- c) the Registrar, for any reason, is unable to perform his or her duties under this Law.

5.2 The Registrar will maintain and administer the Kahnawà:ke Kanien'kehá:ka Registry and perform any duties related thereto.

5.3 The Registrar will:

- a) verify, ~~review~~ and decide on applications for recognition as Kanien'kehá:ka of Kahnawà:ke;
- b) ~~review and~~ decide applications to suspend or revoke a person's recognition .

Comment [JP8]: Deleted this term in relation to the Registrar. The term is more appropriate for the Administrative Tribunals and Community Review Board

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5.4 The Registrar will at all times:

- a) respect the principles of fairness, dignity of the person and compassion that are consistent with the traditions and customs of the Kanien'kehá:ka of Kahnawà:ke,
- b) ensure that all information in his or her possession, including but not limited to the Kahnawà:ke Kanien'kehá:ka Registry, is held in confidence and is not divulged, discussed or released to any person or authority, except with the permission of the person to whom the information relates, as required to verify a person's eligibility for benefits and services, as may be required by access to information laws applicable within the Territory, or in accordance with this Law and the Regulations,
- c) ensure the information contained in the Kahnawà:ke Kanien'kehá:ka Registry is safeguarded from loss, destruction, tampering and unauthorized use, and
- d) use reasonable efforts to ensure the information contained in the Kahnawà:ke Kanien'kehá:ka Registry is updated and accurate.

5.5 Notwithstanding s. 5.4, the Registrar will make available for all Kanien'kehá:ka of Kahnawà:ke during normal business hours, the names of those who have been recognized, suspended or revoked from the Kahnawà:ke Kanien'kehá:ka Registry and, including the names of the persons added or removed from the Kahnawà:ke Kanien'kehá:ka Registry

KAHNAWÀ:KE KANIEN'KEHÁ:KA REGISTRY

6.1 The Registrar will add to the Kahnawà:ke Kanien'kehá:ka Registry the name of any person whose application has been verified, ~~reviewed~~ and whose status has been recognized under this Law.

6.2 The Registrar will remove from the Kahnawà:ke Kanien'kehá:ka Registry the name of any person whose entitlements as a Kanien'kehá:ka of Kahnawà:ke has been revoked and will make a notation in the Registry of any person whose entitlements have been suspended.

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REVIEW OF REGISTRAR'S DECISION

- 7.1 A decision by the Registrar may be reviewed by the Administrative Tribunal in accordance with the *Kahnawà:ke Justice Act* and applicable regulations. Application to review a decision of the Registrar must be filed with the Administrative Tribunal within thirty (30) days of the decision.
- 7.2 The Administrative Tribunal shall review and determine whether due process was followed, whether rules of natural justice were adhered to, ensure absence of bias, ensure the decision was reasonable, determine whether there was an absence of jurisdiction, or, whether there was a mistake of law.
- 7.3 The Administrative Tribunal may quash, confirm or vary the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.
- 7.4 A decision by the Administrative Tribunal may be appealed to the Court of Kahnawà:ke in accordance with the *Kahnawà:ke Justice Act* and applicable regulations. Application to appeal a decision of the Administrative Tribunal must be filed with the Court of Kahnawà:ke within thirty (30) days of the decision.
- 7.5 Final judgments or orders by the Court of Kahnawà:ke regarding recognition, suspension and revocation can be automatically appealed to the Kahnawà:ke Court of Appeal. Application to appeal a decision of the Court of Kahnawà:ke must be filed with the Kahnawà:ke Court of Appeal within thirty (30) days of the decision.

Comment [JP9]: CWC At the meeting of the drafting team (4 Oct 2017) it was determined that the term quash should be included. However, there was a discussion about whether the Administrative Tribunal could "vary" the decision.

LR: Legal recommends that the Administrative Tribunal be authorized to vary a decision and render the decision that should have been rendered. If the term "vary" is removed what happens when an Admin Tribunal quashes a decision the applicant would be in limbo--what happens to the application? Is the applicant sent back to the Registrar for a new decision? If the Admin Tribunal is allowed to vary a decision that decision is itself appealable See 9.4 This is a check and balance for an improper judgment of the Admin Tribunal.

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Comment [KF10]: This is consistent with article 19.2(b) of the Justice Act. However, in practice it may be quite some time until such a body is operational.

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COMMUNITY REVIEW BOARD

- 8.1 There is hereby established an interim body to be known as the **Community Review Board** empowered by the Mohawk Council of Kahnawà:ke, through the enactment of this Law.
- 8.2 Decisions by the Registrar may be reviewed by the Community Review Board on an interim basis in accordance with this Law and the *Regulation Respecting the*

Comment [JP11]: Time delay

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Community Review Board, until such time as Administrative Tribunal is operational pursuant to the *Kahnawà:ke Justice Act*. Application to review a decision of the Registrar must be filed with the Community Review Board within thirty (30) days of the decision.

- 9.3 The Community Review Board will consist of five (5) members, selected in accordance with the procedures set out in the *Regulation Respecting the Community Review Board*.
- 9.4 The Community Review Board shall review and determine whether due process was followed, whether laws of natural justice were adhered to, ensure absence of bias, ensure the decision was reasonable, determine whether there was an absence of jurisdiction, or, if there was a mistake of law.
- 9.5 The Community Review Board may quash, confirm or vary the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.
- 9.6 A decision by the Community Review Board may, be appealed to the Court of Kahnawà:ke once the Court becomes operational under the *Kahnawà:ke Justice Act*. Application to appeal a decision of the Community Review Board must be filed with the Court of Kahnawà:ke within thirty (30) days of the decision.
- 9.7 The Community Review Board, in performing its duties, conducting its meetings and making its decisions, will respect the rules of natural justice, principles of fairness, dignity of the person, compassion and consensus that are consistent with the traditions and customs of the Kanien'kehá:ka of Kahnawà:ke.
- 9.8 The members of the Community Review Board will be remunerated for their services in an amount to be fixed by Mohawk Council Executive Directive (MCED).
- 9.9 MCK Justice Services will, until such time as the Administrative Tribunal is operational, fund the Community Review Board. The Community Review Board will submit to MCK Justice Services an annual budget for its approval.
- 9.10 The Community Review Board will create and maintain a record of its proceedings, any decisions it makes and the reasons for its decisions.

Comment [KF12]: See article 22.1(2) of the Justice Act. I don't have an issue with the language per se, but MCK Justice Services would "fund" the Community Review Board only so far as the Board would submit to MCK Justice Services an annual budget for (essentially) approval-in-principle, with final approval by MCED. Issues like these are sometimes difficult due to a lack of clarity surrounding the roles to be played by MCK Justice Services and the Justice Commission.

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APPLICATION FOR RECOGNITION

- 10.1 Everyone must apply, in accordance with the procedure set forth in the *Regulations Respecting Applications to be Recognized as a Kanien'kehá:ka of Kahnawà:ke*, to be recognized as a Kanien'kehá:ka of Kahnawà:ke if they are not currently on the Kahnawà:ke Kanien'kehá:ka Registry.
- 10.2 Parents or Guardians may apply for a Minor Child under their care.
- 10.3 Any interested person may apply on behalf of a person who is mentally and/or physically unable to apply personally.
- 10.4 If a parent denies filiation with a child, proof of filiation acceptable to the Registrar may be provided to establish lineage for the purposes of determining Kanien'kehá:ka of Kahnawà:ke recognition. For greater clarity, the Registrar's decision establishing or denying filiation is not binding for any other purpose in any other tribunal or Court. .
- 10.5 A person will be recognized as a Kanien'kehá:ka of Kahnawà:ke upon verification that he or she satisfies all of the criteria under one of the following categories:
- a) **Two Kanien'kehá:ka of Kahnawà:ke Parents**
 - i. is born of two (2) Kanien'kehá:ka of Kahnawà:ke parents and
 - ii. has four (4) Kanien'kehá:ka Great-Grandparents.
 - b) **One Kanien'kehá:ka of Kahnawà:ke Parent and One Parent with Kanien'kehá:ka Lineage**
 - i. is born of one (1) Kanien'kehá:ka of Kahnawà:ke parent and one (1) parent with Kanien'kehá:ka Lineage and
 - ii. has four (4) Onkwehonwe great-grandparents, with at least two (2) being recognized as Kanien'kehá:ka of Kahnawà:ke Great-Grandparents.
 - c) **One Kanien'kehá:ka of Kahnawà:ke Parent and One Parent with Onkwehonwe Lineage**

Comment [JP13]: This section is new—it has not changed the substance of the criteria to be recognized as a Kanien'kehá:ka of Kahnawà:ke—it simply reorganizes these criteria so that they are all in one place.

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- i. is born of one (1) Kanien'kehá:ka of Kahnawà:ke parent and one (1) parent with Onkwehonwe Lineage and
- ii. has four (4) Onkwehonwe great-grandparents, with at least two (2) being recognized as Kanien'kehá:ka of Kahnawà:ke Great-Grandparents.

d) One Kanien'kehá:ka of Kahnawà:ke Parent and One Iah te-Onkwehonwe Parent

- i. is born of one (1) Kanien'kehá:ka of Kahnawà:ke parent and one (1) Iah te-Onkwehonwe parent,
- ii. has four (4) Onkwehonwe great-grandparents, with at least two (2) being recognized as Kanien'kehá:ka of Kahnawà:ke Great-Grandparents,
- iii. has reached the Age of Majority, and
- iv. maintains Family Ties and Community Ties.

e) Two Onkwehonwe Parents

- i. is born of two (2) Onkwehonwe parents,
- ii. has four (4) Onkwehonwe great-grandparents, with at least two (2) being recognized as Kanien'kehá:ka of Kahnawà:ke Great-Grandparents ,
- iii. has reached the Age of Majority, and
- iv. maintains Family Ties and Community Ties.

- 10.6 When an individual is recognized as a Kanien'kehá:ka of Kahnawà:ke, the Registrar will make the necessary inclusions to the Kahnawà:ke Kanien'kehá:ka Registry.
- 10.7 Recognition as a Kanien'kehá:ka of Kahnawà:ke, and the entitlements associated with recognition, are not transferable to another person or entity.
- 10.8 A person whose name does not appear on the Kahnawà:ke Kanien'kehá:ka Registry as a result of having married an Iah te-Onkwehonwe prior to May 22, 1981, but who otherwise would qualify to be recognized as a Kanien'kehá:ka of

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Kahnawà:ke under section 10.5 of this Law is eligible to apply to be recognized if they are no longer married to an Iah te-Onkwehonwe.

Comment [JP14]: This last line was added.

ADOPTED CHILDREN

- 11.1 A Kanien'kehá:ka of Kahnawà:ke who has adopted a Minor Child will have the Child's biological lineage verified by the Registrar.
- 11.2 The Registrar will determine whether the Minor Child can be recognized as a Kanien'kehá:ka of Kahnawà:ke based on the criteria of this Law.
- 11.3 Once the Minor Child's lineage is verified the Minor Child's right and eligibility to have their name registered on the Kahnawà:ke Kanien'kehá:ka Registry will follow the same rules and procedures as persons who are not adopted. For greater clarity, it is the intent of this Law that adopted persons and non-adopted persons who have similar lineage are afforded the same rights and obligations under the provisions of this Law.
- 11.4 An Onkwehonwe Minor Child who is adopted by a Kanien'kehá:ka of Kahnawà:ke parent(s) is eligible to apply to be recognized as a Kanien'kehá:ka of Kahnawà:ke, based on the criteria of this Law at the time the application is made, once they have reached the Age of Majority and can prove that they have Family Ties and Community Ties.
- 11.5 A Minor Child who has no Kanien'kehá:ka Lineage or Onkwehonwe Lineage who is adopted by a Kanien'kehá:ka of Kahnawà:ke parent(s) is not eligible for recognition. However, provided the child is adopted prior to the enactment of the *Kahnawà:ke Membership Law* (KRL c. M-1) on November 10, 2003, they are entitled to Reside within the Territory with their adoptive Kanien'kehá:ka of Kahnawà:ke parent(s) and to receive educational services within the Territory until he or she reaches the Age of Majority.
- 11.6 A Minor Child who has no Kanien'kehá:ka Lineage or Onkwehonwe Lineage adopted by a Kanien'kehá:ka of Kahnawà:ke parent(s) after the enactment of the *Kahnawà:ke Membership Law* (KRL c. M-1) on November 10, 2003 is not eligible to be recognized as a Kanien'kehá:ka of Kahnawà:ke.

ENTITLEMENTS OF KANIEN'KEHÁ:KA OF KAHNAWÀ:KE

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12.1 Subject to Kahnawà:ke's laws, regulations and policies, Kanien'kehá:ka of Kahnawà:ke have entitlements, and privileges with regards to benefits and services, to the extent they are available.

RESPONSIBILITIES OF KANIEN'KEHÁ:KA OF KAHNAWÀ:KE

13.1 All Kanien'kehá:ka of Kahnawà:ke have the responsibility to:

- a) respect and protect the customs and traditions of the Kanien'kehá:ka of Kahnawà:ke and must comply with the codes, laws and regulations applicable in the Mohawk Territory of Kahnawà:ke,
- b) protect and show Respect for Mother Earth,
- c) contribute to the preservation and advancement of the community of Kahnawà:ke,
- d) have a clan or be willing to avail themselves of the established Kahnawà:ke process of affiliation in seeking a Kanien'kehá:ka clan, if they are not born into one,
- e) respect and protect children, persons, personal property and lands within the Territory,
- f) respect and encourage the use of Kanien'kéha and Kanien'kehá:ka culture, and
- g) maintain Community ties with Kahnawà:ke.

KANIEN'KEHÁ:KA OF KAHNAWÀ:KE PLEDGE

14.1 Once a person is recognized as a Kanien'kehá:ka of Kahnawà:ke, they must take the Kanien'kehá:ka of Kahnawà:ke Pledge at the **welcoming ceremony**, in the form provided in the Regulations, affirming that he or she will respect the responsibilities of a Kanien'kehá:ka of Kahnawà:ke, as set out in this Law

Comment [JP15]: CWC

Everyone? If not who? Is a "welcoming ceremony" necessary – if so there is an obligation created to have these ceremonies – could this be informal and not in the law so as to not create that obligation?

Add a provision that recognizes that it is an obligation unless someone cannot make it for health or other serious reasons.

Comment [JP16]: Revocation is dealt with in a separate section

SUSPENSION OF ENTITLEMENTS

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15.1 If a Kanien'kehá:ka of Kahnawà:ke leaves the Territory voluntarily pursuant to the procedure set forth in the *Regulations Respecting Suspension and Revocation of Entitlements to Receive Benefits and Services*, because the person:

- a) married, or marries, an Iah te-Onkwehonwe person after May 22, 1981, or
- b) commenced, or commences, after May 22, 1981, a Common-Law Relationship with an Iah te-Onkwehonwe person, or
- c) adopted or adopts a Child who has no Kanien'kehá:ka Lineage or Onkwehonwe Lineage after November 10, 2003,

the person will have their entitlement to receive any of the benefits and services to which they would otherwise be entitled as a Kanien'kehá:ka of Kahnawà:ke suspended for such time as they remain in one of the above situations.

15.2 A Kanien'kehá:ka of Kahnawà:ke who voluntarily leaves the Territory pursuant to the procedure set forth in the *Regulations Respecting Suspension and Revocation of Entitlements to Receive Benefits and Services* will be entitled to have their suspension lifted by providing proof acceptable to the Registrar that the reason for their suspension no longer exists.

15.3 If the Registrar is satisfied that the reason for the suspension no longer exists, the Registrar will remove the notation of the person's suspension on the Kahnawà:ke Kanien'kehá:ka Registry and the person will reacquire their entitlement to receive the benefits and services to which they are entitled as a Kanien'kehá:ka of Kahnawà:ke.

15.4 A Kanien'kehá:ka of Kahnawà:ke who commits a material breach of any of his or her responsibilities as a Kanien'kehá:ka of Kahnawà:ke, as set out in this Law, the regulations or the Kanien'kehá:ka of Kahnawà:ke Pledge may have their entitlements suspended by the Registrar pursuant to the procedure set forth in the *Regulations Respecting Suspension and Revocation of Entitlements to Receive Benefits and Services*.

Comment [JP17]: FLR Some of the responsibilities may overlap with responsibilities in other Laws (ie. Environmental responsibilities) would this not lead to a double sanction for the same infraction?

Comment [SJ18]: CWC
Which one and for what breaches

REVOCATION OF ENTITLEMENTS

16.1 A Kanien'kehá:ka of Kahnawà:ke who:

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a) married, or marries, an Iah te-Onkwehonwe person after May 22, 1981, or

b) commenced, or commences, after May 22, 1981, a Common-Law Relationship with an Iah te-Onkwehonwe person, or

c) adopts a Child who has no Kanien'kehá:ka Lineage or Onkwehonwe Lineage after November 10, 2003

and who does not voluntarily leave the Territory will have their entitlement to reside in the Territory and to receive any of the benefits and services to which they would otherwise be entitled as a Kanien'kehá:ka of Kahnawà:ke, revoked pursuant to the procedure set forth in the *Regulations Respecting Suspension and Revocation of Entitlements to Receive Benefits and Services*, for so long as they remain married, in a common-law relationship.

16.2 A Kanien'kehá:ka of Kahnawà:ke who does not voluntarily leave the Territory pursuant to the procedure set forth in the *Regulations Respecting Suspension and Revocation of Entitlements to Receive Benefits and Services* will be eligible to apply to have their name added to the Kahnawà:ke Kanien'kehá:ka Registry by providing proof acceptable to the Registrar that the reason for their revocation no longer exists.

16.3 If the Registrar is satisfied that the reason for their revocation no longer exists, the Registrar will verify, ~~review~~ and decide the person's application for recognition as Kanien'kehá:ka of Kahnawà:ke in accordance with the provisions of this Law at the time the person's application is filed.

16.4 Any person whose application for recognition as a Kanien'kehá:ka of Kahnawà:ke was approved based on information, documents or circumstances that are fraudulent, false or misleading may have their recognition as a Kanien'kehá:ka of Kahnawà:ke revoked.

RENUNCIATION

17.1 Any person may renounce their recognition as a Kanien'kehá:ka of Kahnawà:ke by providing written notice to the Registrar. Renunciation of the person's recognition as a Kanien'kehá:ka of Kahnawà:ke will be effective from the date on which it is received by the Registrar. The Registrar's confirmation of

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renunciation will be sent by registered mail to the person who renounced his or her recognition as a Kanien'kehá:ka of Kahnawà:ke. The Registrar will, remove the person's name from the Kahnawà:ke Kanien'kehá:ka Registry.

17.2 A person who has renounced their recognition as a Kanien'kehá:ka of Kahnawà:ke will be eligible to apply to have their name added to the Kahnawà:ke Kanien'kehá:ka Registry by making an application to the Registrar and the Registrar will verify, ~~review~~ and decide the person's application for recognition as Kanien'kehá:ka of Kahnawà:ke in accordance with the provisions of this Law at the time the person's application is filed.

REGULATIONS

- 18.1 The Mohawk Council of Kahnawà:ke will, by Mohawk Council Executive Directive enact the Regulations necessary for the implementation of this Law, including:
- a) the procedure for considering and deciding an application to suspend or revoke a person's recognition as a Kanien'kehá:ka of Kahnawà:ke,
 - b) the form and content of Confidentiality Agreements,
 - c) the form and content of the Kanien'kehá:ka of Kahnawà:ke Pledge,
 - d) the form and content of applications for recognition,
 - e) the rules and procedures to be followed by the Registrar;
 - f) such other Regulations that may be necessary to implement the provisions of this Law.
- 18.2 The Mohawk Council of Kahnawà:ke will consult with the Registrar before enacting Regulations establishing the forms required for the purposes of the Registrar's office.
- 18.3 Copies of all Regulations enacted by the Mohawk Council of Kahnawà:ke will be provided to the Registrar and will be made available to the Kanien'kehá:ka of Kahnawà:ke.

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NOTICE

- 19.1 Any notices required by this Law or the Regulations will be sent by registered mail and, for all purposes of this Law and the Regulations, will be deemed to have been received on the date the recipient signs for it.
- 19.2 In the event a notice cannot be sent by registered mail, or the recipient fails or refuses to sign for it within fifteen (15) days from the date on which the registered mail was sent, the Registrar may direct that the required notice be given by bailiff or in any other way that reasonably ensures proof of reception, including publishing a summary of the notice for two consecutive weeks in the local electronic or print media.
- 19.3 Notice given by publication in accordance with this section will be deemed to have been received on the date following the date of the second publication.
- 19.4 Notice given by publication in accordance with this section will satisfy the notice requirements of this Law or the Regulations.

KANIEN'KÉHA VERSION OF LAW

- 20.1 The Kanien'kéha version of this Law will be verified to be a true translation of the English version.
- 20.2 In the event of a conflict between the English language version and the Kanien'kéha version of this Law, the Kanien'kéha version will be the final authority.

GENERAL PROVISIONS

- 21.1 The Preamble is an integral part of this Law.
- 21.2 The 1981 Moratorium and 1984 Kahnawà:ke Mohawk Law concerning membership are repealed on the date this section of the Law comes into force.
- 21.3 The funds necessary to implement this Law and the Regulations will be provided by the Mohawk Council of Kahnawà:ke after being approved in its annual budget.

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- 21.4 The Registrar may decide to extend any of the time periods or deadlines set out in this Law or the Regulations if the Registrar is convinced that it is in the interest of fairness to do so.

AMENDMENTS

- 22.1 This Law may be amended in accordance with the procedure set forth in the Community Decision-Making Process or any other process which may replace it.

ENFORCEMENT

- 23.1 The Kahnawà:ke Peacekeepers have the sole and exclusive authority to enforce this Law.
- 23.2 The Court of Kahnawà:ke has sole and exclusive jurisdiction to hear and decide all matters related to this Law.
- 23.3 If the Court of Kahnawà:ke finds any section of this Law to be invalid the decision does not render this Law invalid in its entirety.

TRANSITORY PROVISIONS

- 24.1 Applications received after September 12, 2007 for recognition to have one's name placed on the Kahnawà:ke Kanien'kehá:ka Registry or on the Non-Member Resident List are void. Persons seeking to be recognized as Kanien'kehá:ka of Kahnawà:ke must make an application in accordance with the provisions of this Law.

ENACTMENT AND COMING INTO FORCE

- 25.1 Further to the will of the Kanien'kehá:ka of Kahnawà:ke, this Law is enacted on November 10th, 2003 by MCR No:51/2003-2004. The provisions of this Law come into force on September 27th, 2004 in MCR No:41/2004-2005. {the date MCR# used to amend this law will be placed here}