

**COMMUNITY REVIEW FEEDBACK REPORT**  
**REGULATIONS FOR THE ADMINISTRATIVE TRIBUNAL PURSUANT TO THE KAHNAWÀ:KE JUSTICE ACT**

DATE RECEIVED	FEEDBACK - GENERAL	RESPONSES
<p><b>Submitted by e-mail on March 13, 2023 @ 10:10 PM</b></p>	<p>What is the role of precedent/stare decisis at the Tribunal?</p>	<p>Administrative tribunals are not bound by their prior decisions in the same manner as courts. However, decisions made by the forthcoming Administrative Tribunal should be reasonably consistent so that similar cases are decided in a similar manner. Should a decision significantly differ from established practices or leading authorities, the decision-maker should acknowledge and justify this difference in their reasons. The Administrative Tribunal will be bound by decisions made by Kahnawà:ke courts.</p>
	<p>Is there a possibility for the Tribunal to grant a summary judgment?</p>	<p>The Administrative Tribunal can make summary determinations on various matters. Article 23.1 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i> broadly states that the Administrative Tribunal “may, upon an incidental petition, dismiss a proceeding it deems improper or unreasonably delayed, or subject it to certain conditions.”</p> <p>To assist parties appearing before the Administrative Tribunal, article 23.1 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i> has been expanded to include additional grounds upon which a summary determination can be requested.</p>
	<p>What is the role of the common law as it relates to principles of justice? For example, good faith. Example: “Decision-makers will apply the law to the evidence in good faith.” Is good faith defined according to recent case law that discusses what it is? Or is it a broader notion of good faith?</p>	<p>The common law can be used to assist with interpreting/understanding the various principles of justice, particularly in the absence of relevant Kahnawà:ke laws, regulations, case law or “soft law” (e.g.: policies, guidelines, etc.).</p> <p>A notion like “good faith” should be considered in a broader context based on traditional principles and not just “black and white” laws, although Kahnawà:ke laws, regulations, case law and “soft law” (e.g.: policies, guidelines, etc.) can assist with any interpretation.</p>

**COMMUNITY REVIEW FEEDBACK REPORT**  
**REGULATIONS FOR THE ADMINISTRATIVE TRIBUNAL PURSUANT TO THE KAHNAWÀ:KE JUSTICE ACT**

DATE RECEIVED	FEEDBACK - REGULATION RESPECTING THE INSTITUTION AND MANAGEMENT OF THE ADMINISTRATIVE TRIBUNAL	RESPONSES
<p><b>Submitted by e-mail on March 9, 2023 @ 2:27 pm</b></p>	<p>Article 3.2 (5): what is the definition of “retired in good standing”</p>	<p>The term “retired in good standing” refers to how a member of a professional order, at the time of their retirement, was not under investigation, or subject to discipline, for any violation of their code of conduct. Article 3.2(5) of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i> has been updated to include a definition for “retired in good standing.”</p>
	<p>Article 6.1: Examples of serious reasons and special circumstances in a definition</p>	<p>Serious reasons and special circumstance may include but are not limited to a decision-maker being unable to complete a full five (5) year mandate due to employment obligations, declining health, or that they are nearing the age limit of 75. Article 6.1 of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i> has been updated to include examples of “serious reasons and special circumstances.”</p>
	<p>Article 6.3: Reason for limiting to specific age of 75</p>	<p>The reason for limiting the age to 75 was to create a degree of consistency amongst the different judges/decision-makers when it comes to terms of office. Upon further review and focus group discussion held on March 27, 2023, it has been decided to remove the age limit. Decision-makers will be appointed every five (5) years until such time as they resign, are removed from office or their appointment is not renewed. Article 6.3(1) of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i> will be deleted.</p>

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DATE RECEIVED	FEEDBACK - REGULATION RESPECTING THE RULES OF THE ADMINISTRATIVE TRIBUNAL	RESPONSES
<p><b>Submitted by e-mail on March 9, 2023 @ 2:27 pm</b></p>	<p>Article 40.2: what would be the purpose of having a journalist at all.....</p>	<p>Upon further review and focus group discussion held on March 27, 2023, it has been decided to delete article 40.2 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i> on the basis that if a matter before the Administrative Tribunal merits being held in private that it should be closed to the public and journalists.</p>
	<p>Article 47: List and define conflict of interest</p>	<p>The definition for “conflict of interest” and other related matters will be found in a code of conduct that will establish the standards of conduct applicable to decision-makers.</p>
<p><b>Submitted by e-mail on March 13, 2023 @ 10:10 PM</b></p>	<p>Article 3.3: Would the longhouse constitute a public body under this definition? Some might argue they perform a function of government.</p>	<p>It is not intended that the Administrative Tribunal regulations apply to the Longhouse entities.</p>

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<p><b>Submitted by e-mail on March 13, 2023 @ 10:10 PM</b> (cont.)</p>	<p>Article 45.3: What about situations where there may not be a direct conflict of interest, but there are particular facts that give rise to a reasonable <i>perception</i> of a conflict, potentially bringing the administration of justice into disrepute?</p>	<p>This question concerns reasonable apprehension of bias, which is whether a reasonable person properly informed would apprehend that there was conscious or unconscious bias on the part of a decision-maker. There need not be actual bias.</p> <p>Situations where there may be a reasonable apprehension of bias are accounted in articles 47, 48, 49 and 50 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i>. These articles, amongst other things, set out how the following situations will be handled:</p> <ul style="list-style-type: none"> <li>• Reasonable apprehension of bias raised by a decision-maker prior to commencing a hearing;</li> <li>• Reasonable apprehension of bias raised by a party during a hearing;</li> <li>• Reasonable apprehension of bias raised by a decision-maker during a hearing; and</li> <li>• Reasonable apprehension of bias by Lead Decision-maker in their administrative role.</li> </ul>
	<p>Article 61.1: What is the standard of review for the Court? Palpable and overriding error? Correctness?</p>	<p>Unless a specific standard of review is established by a Kahnawà:ke law or regulation, there would be a presumption that the applicable standard for final decisions of the Administrative Tribunal would be the reasonableness standard. To improve clarity, article 61.1 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i> has been updated to include that the applicable standard of review when the Court of Kahnawà:ke undertakes a judicial review of a final decision rendered by the Administrative Tribunal is reasonableness unless another standard of review has been established by Kahnawà:ke law or regulation.</p>

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DATE RECEIVED	FEEDBACK - REGULATION RESPECTING DISCIPLINARY MEASURES FOR DECISION-MAKERS APPOINTED TO THE ADMINISTRATIVE TRIBUNAL	RESPONSES
<p><b>Submitted by e-mail on March 9, 2023 @ 2:27 pm</b></p>	<p>Article 5.3: reword to “complaint forms will be available at Justice Services”</p>	<p>The language “Justices Services will make available...” is common throughout all the regulations applicable to the Administrative Tribunal. No exact location is specified since they will be available through multiple avenues. For example, a form can be picked up at the offices of Justice Services, will be available on-line, can be requested through e-mail, etc.</p>
	<p>Article 6.1: Is use of a bailiff ever necessary?</p>	<p>The use of a bailiff is never mandatory to file any complaint, required documents and/or notices. A bailiff is one of several options available. As per article 6.1 of the draft Regulation <i>Respecting Disciplinary Measures for Decision-makers Appointed to the Administrative Tribunal</i>, a complaint or any required documents and/or notices may be filed in person at the offices of Justice Services, by registered mail, or any other means that reasonably ensures proof of reception. The advantage of using a bailiff is that they will provide a certificate of service that proves a document was served. Use of a bailiff is left to the discretion of a party filing a complaint, required documents and/or notices.</p>
	<p>Article 7.1: replace “as determined” by the Commissioner with something like “as validated”</p>	<p>The term “as determined” is used since a determination is made as opposed to a validation.</p>
	<p>Article 8.0: “Cursory review” term will be questioned....use layman’s term</p>	<p>The Technical Drafting Committee will replace “cursory review” with the term “clerk review”, which would be a more accurate term to use considering the type of review being competed and the position performing that review.</p>

**FOCUS GROUP FEEDBACK REPORT**  
**REGULATIONS FOR THE ADMINISTRATIVE TRIBUNAL PURSUANT TO THE KAHNAWÀ:KE JUSTICE ACT**

DATE RECEIVED	TOPIC - REGULATION RESPECTING THE INSTITUTION AND MANAGEMENT OF THE ADMINISTRATIVE TRIBUNAL	RESPONSES
<p><b>Focus group held on March 27, 2023</b></p>	<p>It was asked by the Technical Drafting Committee whether applicants with a conviction for an indictable offence should be permitted to sit on the Administrative Tribunal.</p> <p>This question pertained to article 3.2(2) of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i>.</p>	<p>There was very strong support by focus group participants that applicants for the Administrative Tribunal should not have been convicted of an indictable offence unless they have received a pardon or record suspension. Reasons provided included how applicants should make an effort to receive a pardon and the impact on the credibility of decisions to be made.</p> <p>Upon further review, the Technical Drafting Committee is going to consider establishing a waiting period and taking into account other factors as to whether a person convicted of an indictable offence should be permitted to sit on the Administrative Tribunal. Such factors may include the nature of the offence, the time elapsed, and whether having the applicant sit on the Administrative Tribunal in light of the offence for which they were convicted would undermine the Administrative Tribunal or the Kahnawà:ke justice system.</p>
	<p>There was a concern raised by a focus group participant about the appointment of decision-makers by the Council of Chiefs and whether this would be a conflict of interest.</p> <p>This concern pertained to article 6.1 of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i>.</p>	<p>There was support by focus group participants for the Council of Chiefs confirming the selection of Decision-makers by an evaluation committee but not being able to review that selection or having the final decision as to who would be appointed a decision-maker.</p> <p>Upon further review, the Technical Drafting Committee is going to maintain the appointment of decision-makers by the Council of Chiefs. The basis is that an appointment by the Council of Chiefs strengthens the position of the decision-makers in the event there are challenges to the authority of the Administrative Tribunal outside of the community. Moreover, the evaluation committee is independent from the Council of Chiefs and is responsible for the actual selection of decision-makers.</p>

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<p><b>Focus group held on March 27, 2023</b></p>	<p>It was asked by the Technical Drafting Committee whether there was an issue with a decision-maker participating on the Administrative Tribunal until the age of 75. Decision-makers could be re-appointed every five (5) years until they reach the age of 75.</p> <p>This question pertained to article 6.3(1) of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i>. It was asked to assist the Technical Drafting Committee with responding to feedback received during the 30-day community feedback period concerning the age limit. The reason for the age limit was to create a degree of consistency amongst the different judges/decision-makers when it comes to terms of office.</p>	<p>After various ideas and questions were put forward, there was support by focus group participants to remove the age limit. Instead, decision-makers would be appointed to five (5) year renewable terms without an age limitation. Article 6.3(1) of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i> will be deleted and decision-makers will be appointed every five (5) years until such time as they resign, are removed from office or their appointment is not renewed.</p>

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<b>DATE RECEIVED</b>	<b>TOPIC - REGULATION RESPECTING THE SELECTION AND APPOINTMENT OF DECISION-MAKERS TO THE ADMINISTRATIVE TRIBUNAL</b>	<b>RESPONSES</b>
<p><b>Focus group held on March 27, 2023</b></p>	<p>There was a concern raised by a focus group participant about the conflict of interest rules applicable to the evaluation committee, which are less stringent than the conflict of interest rules that would apply to the decision-makers.</p> <p>This concern pertained to article 6.3 of the draft <i>Regulation Respecting the Institution and Management of the Administrative Tribunal</i>.</p>	<p>After discussion on this point, which included the importance of consistency, it was suggested by the Technical Drafting Committee that the same conflict of interest rules that apply to the decision-makers also apply to the members of the evaluation committee. There was support by focus group participants for this suggestion. As such, article 6.3 of the draft <i>Regulation Respecting the Selection and Appointment of Decision-makers to the Administrative Tribunal</i> has been revised to reflect that the conflict of interest rules found in the <i>Code of Conduct for Decision-makers Appointed to the Administrative Tribunal</i> will apply to the members of the evaluation committee, with the necessary adaptations as required.</p>



## FOCUS GROUP FEEDBACK REPORT

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<p><b>Focus group held on March 27, 2023</b></p>	<p>It was asked by the Technical Drafting Committee whether the grounds for dismissing a proceeding should be expanded.</p> <p>This question pertained to article 23.3(1) of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i>. It was asked to assist the Technical Drafting Committee with responding to feedback received during the 30-day community feedback period concerning summary judgments.</p>	<p>There was support for expanding the list of grounds upon which a party can request that a proceeding be dismissed. It was suggested that there be a non-exhaustive list of grounds for requesting a dismissal but that any sort of reference to proceedings being dismissed on the grounds that there are no reasonable prospects of success be excluded. It was also suggested that what would constitute an “excessive delay” be further elaborated upon. However, upon further review by the Technical Drafting Committee the reference to “excessive delay” as a ground for dismissal will not be included in the draft regulation. It will be replaced by a requirement that a petitioner must exercise diligence in the pursuit of their petition.</p> <p>To assist parties appearing before the Administrative Tribunal, article 23.1 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i> has been expanded to include additional grounds upon which a summary determination can be requested. There will also be no reference to “reasonable prospects of success.”</p>
	<p>It was asked by the Technical Drafting Committee whether the Administrative Tribunal should have the authority to limit attendance at private hearings. More specifically, should journalists be able to attend private hearings?</p> <p>This question pertained to article 40.2 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i>. It was asked to assist the Technical Drafting Committee with responding to feedback received during the 30-day community feedback period concerning the purpose of having a journalist present at a private hearing at all.</p>	<p>There was support by focus group participants for hearings that are declared private being closed to everyone – including journalists. In effect, If something merits being held in private it should be private to everyone and closed to the public and journalists. Article 40.2 of the draft <i>Regulation Respecting the Rules of the Administrative Tribunal</i> has been deleted.</p>

