

# REGULATION RESPECTING REQUESTS FOR EVICTION ORDERS

K.R.L. c., R-3, r-8  
Enacted by MCED #xxxx/2023-2024

## SECTION I - GENERAL

### 1. PURPOSE

- 1.1 The purpose of this regulation is to establish the rules of evidence and procedure at the Court of Kahnawà:ke for requests for eviction orders. It will ensure the simple, flexible, and efficient management of proceedings in accordance with the principles of natural justice.

### 2. APPLICATION

- 2.1 For purposes of clarity, these rules do not apply to any other proceedings brought before a Justice pursuant to the *Kahnawà:ke Residency Law*.

### 3. DEFINITIONS

- 3.1 **Affirmation** means a solemn and formal declaration given by a person promising to tell the truth when giving testimony as a witness or making an affidavit.
- 3.2 **Court** means the Court of Kahnawà:ke.
- 3.3 **Incidental Request** means an application to the Court during proceedings before the time of final decision which requests that a specific interim order or decision be made by the Court.
- 3.4 **Judicial Notice** means the acceptance of a matter of fact or law by the Court without the necessity of formal proof in the form of evidence presented by one of the parties.
- 3.5 **Justice** means a Justice of the Peace of the Court of Kahnawà:ke, or any other Judge appointed pursuant to the *Kahnawà:ke Justice Act* or its regulations but excludes an appeal judge appointed pursuant to that Act.
- 3.6 **Natural justice** means the assurance that the principles and procedures of fair and unbiased decision-making are followed and made in good faith.
- 3.7 **Notice of Eviction** means a written notice to a person residing on the Territory indicating that they will be evicted from the Territory.
- 3.8 **Representative** means:
- 1) a person authorized to practice law in the province;
  - 2) anyone otherwise authorized by law to represent a person who does not have the capacity to represent themselves; or
  - 3) anyone who has prior authorization from the Court of Kahnawà:ke to represent the party.
- 3.9 **Respondent** means the person(s) against whom an eviction order is sought by a Compliance Officer.

- 3.10 **Request for Eviction Order** means a motion instituting proceedings before the Court of Kahnawà:ke whereby a Compliance Officer requests that an eviction order be issued against a person who has received a notice of eviction. The Request for Eviction Order forms the basis of the entire proceeding.
- 3.11 **Served** means formal delivery of a document or proceeding to a person.
- 3.12 **Subpoena** means the usual writ for the summoning of witnesses or the submission of evidence, as records or documents, before a court or other deliberative body.

#### **4. COMPUTATION OF TIME**

- 4.1 In computing any time period fixed by this regulation:
- 1) The day which marks the start of the period is not counted, but the last day is counted;
  - 2) Holidays are counted. However, when the last day is a holiday, the period is extended to the next following working day; and
  - 3) Saturday and Sunday are considered holidays as are January 2 and December 26 and any other day declared by the Mohawk Council of Kahnawà:ke to be a holiday.

#### **5. PROPORTIONALITY**

- 5.1 The proceedings and the presentation of evidence at all stages must be proportionate to the nature and complexity of the matter at dispute.

#### **6. POWERS OF JUSTICE**

- 6.1 In the absence of provisions applicable to a particular situation, the Justice may apply any procedure consistent with principles of natural justice.
- 6.2 The Justice has all the powers necessary to exercise their jurisdiction, including the power to decide any issue of law or fact that may be required. This includes making any order, including a provisional order, it considers appropriate to safeguard the parties' rights.
- 6.3 The Justice may relieve a party from failure to act within the time prescribed by law or regulation if:
- 1) the party establishes they were unable, for valid reasons, to act sooner; and
  - 2) if the justice considers that no other party suffers serious harm from the failure to act.
- 6.4 The Justice may accept a written proceeding despite a defect of form or an irregularity.
- 6.5 No judicial proceedings may be brought against a Justice for any act done in good faith in the performance of their duties.

#### **7. METHODS OF SUBMISSION**

- 7.1 The request for eviction order, incidental request(s) and any required documents and/or notices must be filed at the offices of the Court by one of the following methods:
- 1) in person at the offices of the Court;
  - 2) bailiff;
  - 3) registered mail; or
  - 4) any other means that reasonably ensures proof of reception.

**8. DATE OF SUBMISSION**

8.1 The date of filing of a request for eviction order, incidental request, and any required documents and/or notices will be the date it is received at the offices of the Court.

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

**9. COMMUNICATION**

9.1 Any request for eviction order, incidental request or correspondence addressed to the Court must also be sent to the other parties.

9.2 Any subsequent correspondence must specify the file number assigned to the matter at issue.

9.3 Every party or representative must inform the clerk without undue delay of any change in address or other contact information.

9.4 Justices are not to be contacted directly by telephone or remote means concerning a proceeding by any individual party, witness or representative. Any such calls will be forwarded to the clerk.

For further clarity, this prohibition does not apply when all other participants in the file are included in the call.

**SECTION II - INITIAL STAGES OF PROCEEDING**

**10. REQUEST FOR EVICTION ORDER**

10.1 The request for eviction order will be addressed to the Court. It is to be filed at the Court no sooner than 10 days from the notice of eviction.

10.2 A request for eviction order must:

- 1) indicate the Compliance Officer's name, address and other contact information;
- 2) indicate if the Compliance Officer is being represented and if so, the representative's name, professional address and other contact information;
- 3) specify the grounds for the request for eviction order, including any laws being relied on;
- 4) state anything which, if not alleged, could take another party by surprise, or raise an unexpected debate. Statements must be clear, precise and concise, presented in logical order;
- 5) provide any supporting documentation and names of witnesses, if applicable;
- 6) state the estimated time required for each witness;
- 7) state whether an interpreter will be required; and
- 8) state the precise outcome being sought.

The request for eviction order must include a copy of the notice of eviction.

Justice Services will make available a request for eviction order form to assist parties with submitting an application to the Court.

10.3. Upon receipt of a validly filed request for eviction order, the clerk will send a copy of the request for eviction order to the respondent and their representative.

**11. RESPONSE**

11.1 A response must:

- 1) indicate if the respondent is being represented and if so, the representative's name, address and other contact information;
- 2) specify the grounds for the response, including any laws being relied on;
- 3) provide any supporting documentation and names of witnesses, if applicable;
- 4) state the estimated time required for each witness;
- 5) state whether an interpreter will be required; and
- 6) state the precise outcome being sought.

Justice Services will make available a response form to assist parties with submitting a response to the Court.

**12. REQUEST FOR CLARIFICATION**

12.1 The Justice may require a party to explain or clarify their position in writing, file documents or present evidence within the time period it determines.

It may also require a party to provide a list of the witnesses they intend to call at the hearing, as well as a summary of their testimony.

12.2 If the party does not meet one of the requirements provided for in section 12.1 within the set time period, the Justice may, depending on the circumstances:

- 1) refuse the filing of the document or evidence; or
- 2) refuse to receive any evidence related to the required information, document or evidence and proceed with the hearing.

**13. INCIDENTAL REQUEST**

13.1 Any incidental request must be made in writing and will:

- 1) indicate the name of the parties;
- 2) indicate the file number;
- 3) indicate the interest in the case if not one of the parties;
- 4) specify the grounds for the incidental request, including any laws being relied on;
- 5) list any supporting documentation and names of witnesses; and
- 6) state the precise outcome being sought.

Justice Services will make available an incidental request form to assist parties with submitting a response to the Court.

13.2 If the person making the incidental request is not one of the parties, in addition to the requirements listed at section 13.1 (1-6), the incidental request must also indicate their name, address and any other contact information. If the person making the request is represented, the incidental request must also contain the same information for the representative.

**14. INCIDENTAL RESPONSE**

- 14.1 A response to an incidental request must meet the same requirements as those set forth at section 11.1 of this regulation. The response form made available by Justice Services for responding to a request for eviction order may also be used for submitting an incidental response to the Court.

**15. PAYMENT OF FILING FEES OR EXPENSES**

- 15.1 A document will be considered validly filed once any required fees or expenses are paid unless a special dispensation is granted by the Commissioner of Justice.
- 15.2 If fees or other expenses are required for the filing of a document, the document will be considered validly filed only if the fees or expenses have been paid.
- 15.3 If the person filing the document is unable to pay the required fees or expenses they may request a special dispensation from the Commissioner of Justice and if granted the dispensation will replace the payment of the fees or expenses.

The Commissioner of Justice will take into consideration all relevant factors. The decision of the Commissioner of Justice is final and without appeal.

**16. DISCONTINUANCE**

- 16.1 A request for eviction order or any incidental request may be discontinued by filing at the offices of the Court a signed written notice from the discontinuing party or their Representative.

A party may also give notice of discontinuance orally at a hearing.

**17. INTERVENTION**

- 17.1 The Justice may authorize, on the conditions it determines, every person who has a sufficient interest to make representations during a proceeding.

**18. REQUIRED PARTY**

- 18.1 Every party to a proceeding may, on an incidental request, with the authorization of the Justice and on the conditions it determines, require the participation of a third party where necessary to fully resolve the dispute.

The Justice may, of their own motion, order the participation of any person whose interests could be affected by its decision.

**19. DISMISSAL OF PROCEEDING**

- 19.1 The Justice may, upon an incidental request, dismiss a proceeding it deems improper or unreasonably delayed, or subject it to certain conditions.

**20. JOINDER**

- 20.1 Cases in which the questions in dispute are substantially similar or whose subject-matters could suitably be combined, whether or not the same parties are involved, may be joined by order of the Justice, on the conditions they determine.

An order made under the first paragraph may be revoked by the Justice upon hearing the matter if it is of the opinion that the interests of justice will be better served by doing so.

**21. REPRESENTATION**

21.1 The following persons are recognized as having a right to represent a party before the Court without prior approval:

- 1) a person authorized to practice law in the province; or
- 2) anyone otherwise authorized by law to represent a person who does not have the capacity to represent themself.

21.2 Any person required to obtain prior approval from the Court to represent a party must:

- 1) provide a mandate in paper form, signed by the person wishing to be represented;
- 2) indicate, if such is the case, that the representative is authorized to consult the file of the person represented or to obtain a copy thereof; and
- 3) describe how they have the ability, skills and experience to act as representative.

Justice Services will make available a form to assist persons with requesting approval to represent a party.

21.3 The request for authorization to represent will be forwarded to a Justice who will decide the issue and provide a written decision. The Justice's decision is final and without appeal.

Before rendering a decision on the request, the Justice will ensure that the choice of a party to be represented by a person who does not meet the requirements at section 21.1 of this regulation is an informed one. In doing so, they will advise the party that:

- 1) they will not have recourse to various remedies which might be available to them if they were represented by a lawyer who performed inadequately;
- 2) Kahnawà:ke laws do not require that persons acting as such a representative receive any training or demonstrate any level of expertise before being authorized to represent;
- 3) while certain minimum standards of competence and ethics are expected from representatives who are lawyers, no such standards are imposed upon representatives who are not lawyers;
- 4) the representative will be required to follow all applicable rules of procedure of the Court; and
- 5) if they are not satisfied with the representation they are receiving, they have a right to dismiss their representative in accordance with sections 21.5 and 21.6 of this regulation.

21.4 A person who agrees to represent a party after a petition is filed must give written notice to the Court and the other parties without delay.

21.5 A party who dismisses or replaces their representative must give written notice to the Court and the other parties without delay.

21.6 Anyone wishing to cease representing a party must provide written notification to all parties and the Court without delay.

21.7 Communications of the Court must be addressed to the parties and/or their representatives, as the case may be.

## **22. CASE MANAGEMENT CONFERENCE**

- 22.1 Where warranted by the circumstances of a case, for example cases of a complex nature or where one of the parties fails to act within the time prescribed by law, the Justice may call the parties to a case management conference. The Justice may do this on their own initiative or at the request of one of the parties.

The purpose of the case management conference is to:

- 1) Come to an agreement with the parties as to the conduct of the proceeding, to specify the undertakings of the parties and to determine a binding timetable for the proceedings.

Should the parties fail to agree on their own, the Court will determine a binding timetable for the proceeding; and

- 2) Determine how the conduct of the proceeding may be simplified or accelerated and the hearing shortened, including clarifying the questions at issue or admitting any fact or document.

The binding timetable referenced at subparagraph (1) must cover, among other subjects, the procedure and time limit for the communication of exhibits, written statements in lieu of testimony and detailed affidavits, and experts' appraisals.

- 22.2 The minutes of the conference will be drawn up by the clerk and signed by the Justice having conducted the conference.
- 22.3 If one of the parties fails to attend the conference, the Justice will record the absence and make the decisions they consider appropriate.
- 22.4 If one of the parties fails to comply with the timetable, the Justice may on an incidental request make the appropriate decisions in the interests of justice, including dismissal of case.

## **23. PRE-HEARING CONFERENCE**

- 23.1 The Justice may call the parties to a pre-hearing conference if they consider it useful and circumstances allow it.

23.2 The purpose of the pre-hearing conference is to:

- 1) define the questions to be dealt with at the hearing;
- 2) clarify the allegations and the conclusions sought;
- 3) ensure that all documentary evidence is exchanged by the parties;
- 4) plan the conduct of the proceedings and proof at the hearing;
- 5) examine the possibility for the parties admitting certain facts or proving them by sworn statements; and
- 6) examine any other question likely to simplify or accelerate the conduct of the hearing.

- 23.3 Minutes of the pre-hearing conference will be drawn up by the clerk and signed by the parties and by the Justice present at the conference.

Agreements and decisions recorded in these minutes will, as far as they may apply, govern the conduct of the proceeding. The Court may permit a deviation to prevent an injustice.

**24. NOTICE OF HEARING**

- 24.1 The clerk will coordinate and schedule hearing times with the parties.
- 24.2 Notice of the hearing will be sent to the parties no less than two (2) weeks before the hearing stating:
- 1) the purpose, date, time and place of the hearing;
  - 2) that the parties have the right to be represented before the Court; and
  - 3) that the Court has the authority to proceed, without further delay or notice, despite the failure of a party to appear at the time and place fixed if no valid excuse is provided.
- 24.3 The Court will, so far as is possible, hold the hearing at a date and time when the parties and any witnesses can attend
- 24.4 A party who intends to produce a document as evidence at the hearing must, not later than 15 days before the hearing, send a copy of the document to the other parties and to the Court.

**25. ADDITIONAL TIME FOR HEARING**

- 25.1 A party who is of the opinion that the Court must schedule more than one day of hearing will request it as soon as possible. The party must then indicate to the Court the expected duration of the hearing and the grounds justifying it.

**26. POSTPONEMENT**

- 26.1 A party requesting postponement of a hearing must file an incidental request to the Court as soon as the grounds for postponement become known.

In addition to the requirements found at section 13.1 of this regulation, an incidental request for postponement must also include:

- 1) the consent of the other parties, if applicable;
  - 2) reasons for postponement;
  - 3) if the reason for postponement is based on the need for the services of an expert, an indication that the expert has accepted the mandate and that they will be available to testify at the next date to be set, if possible; and
  - 4) the earliest dates when all the parties, their representatives, and witnesses, including any experts, are available.
- 26.2 The postponement may be granted if it is:
- 1) based on serious grounds; and
  - 2) the interests of justice will be better served as a result.
- No postponement will be granted solely on agreement of the parties.
- 26.3 The Court may refuse an application for postponement due to:
- 1) the nature of the matter;
  - 2) the impossibility to set a new hearing at an early enough date;
  - 3) the obligation to comply with a time period prescribed by law;
  - 4) the conduct of the party submitting the application; or

5) a party sustaining prejudice as a result of the postponement.

26.4 When the application for postponement is based on the need for the services of an expert or by the expert's unavailability for the hearing, the Court may ask the party requesting the postponement to confirm, as the case may be, that the expert accepts the mandate or that the expert will be available to testify at the next date to be set.

## **27. SUBPOENA**

27.1 A party who wishes to summon a witness to testify, to submit records or documents as evidence, or both, will do so by means of a subpoena in the form established by Justice Services.

The subpoena will be issued by the Court or the lawyer representing a party.

27.2 The subpoena must be served on the witness at least ten (10) days prior to the date of appearance. However, in the interest of justice, the Court may reduce the ten (10) day service period. That decision must be specified in the subpoena.

27.3 A witness who is required to provide documents concerning a person's state of health must take the necessary measures to protect the confidentiality of the information in the documents by providing them in a sealed envelope.

27.4 A party who plans to have a professional testify on a person's state of health or to produce an expert witness must inform the Court without delay.

The party must then indicate the name and occupation of the witness to the Court.

27.5 Where any person validly served a subpoena fails to appear before the Court at the time and place specified therein, the Court may:

- 1) proceed in absence of the witness; or
- 2) where the witness is essential to the case,
  - i) postpone the hearing and issue a second subpoena; or
  - ii) order to the Peacekeepers or other appropriate authority to bring the person before the Court to provide an explanation for their absence.

Where the explanation does not justify their absence, the Court may condemn them to pay the costs related to the postponement of the hearing.

27.6 Every person who refuses to give testimony and/or comply with an order of the Court may be found guilty of contempt.

## **SECTION III - HEARING**

### **28. CONDUCT OF HEARING**

28.1 The Court has full authority over the conduct of the hearing. It will, in conducting the proceedings, be flexible and ensure the merits of the case will be heard despite any procedural errors.

28.2 The Court will conduct the hearing in keeping with the duty to act impartially, so as to ensure a fair process.

28.3 The Court will give the parties the opportunity to prove the facts in support of their allegations and to present evidence on any matter that may be relevant to the case.

- 28.4 The Court will rule on the admissibility of evidence and means of proof and may, for that purpose, follow the ordinary rules of evidence applicable in the Mohawk Territory of Kahnawà:ke for civil matters.

The Court will, however, even of its own initiative, reject any evidence which was obtained under such circumstances that fundamental rights, and freedoms were breached and the use of which could bring the administration of justice into disrepute.

- 28.5 The Court will:

- 1) take measures to clearly define the issue; and
- 2) provide, if necessary, fair and impartial assistance to each party during the hearing.

- 28.6 The Court will attempt to ensure that parties who are unrepresented are not unduly disadvantaged at a hearing.

While the Court cannot act as counsel to an unrepresented party, it is appropriate to clearly explain the procedure to be followed in a hearing. During a hearing, the Court may, in clear and simple language, outline for the party the relevant evidentiary and procedural rules which have a bearing on the conduct of the proceeding.

## **29. EVIDENCE**

- 29.1 Unless it has already been filed at the offices of the Court for the purposes of the case management conference, a party who intends to produce a document as evidence at the hearing must, not later than 15 days before the hearing, send a copy of the document to the other parties and to the Court.

In the case of an expert's report or a technology-based document, the report or document must be sent not later than 30 days before the date of the hearing.

- 29.2 The Court may refuse to admit any evidence that is not relevant or that is not of a nature likely to further the interests of justice.

- 29.3 The Court must take judicial notice of Kahnawà:ke laws and regulations. Any other law or regulation relied upon by the parties must be proven unless the Court indicates that they will take judicial notice of said law and regulations.

The Court may also take judicial notice of facts that are generally recognized.

- 29.4 Before taking judicial notice, the Court will provide the parties with the opportunity to refute such other applicable laws.

- 29.5 When a visit of the premises is ordered, the Court will determine the rules applicable to the visit.

## **30. WITNESSES**

- 30.1 Except as provided for under section 30.3 and 30.4, a person called to testify will take an oath or solemnly affirm to tell the truth prior to giving their testimony. The person will then state their name, address, and occupation.

- 30.2 Any person who has taken an oath or solemnly affirmed to tell the truth knowingly gives false or misleading testimony at a hearing may be subject to prosecution.

- 30.3 A person under fourteen years of age will not take an oath or make a solemn affirmation. Their testimony will be received only if they are able to understand and respond to questions, and the Court will require them to promise to tell the truth.

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

- 30.4 A person fourteen years of age or older who does not understand the nature of a solemn affirmation will only testify on promising to tell the truth if they are able to communicate the evidence.

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

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

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

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

- 30.8 The Court may order the exclusion of witnesses.

- 30.9 A witness may not refuse, without valid reason, to answer a question legally put to them by the Court or by the parties.

However, no witness may be compelled to answer a question that would result in the disclosure of confidential information protected by professional secrecy.

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

- 30.10 Any person who:

- 1) refuses to make a solemn affirmation when duly required to do so;
- 2) omits or refuses to, without just cause, answer any question that may be lawfully put to them; or
- 3) refuses to testify in accordance with this regulation;

may be prosecuted for contempt and punished accordingly before the Court of Kahnawà:ke.

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

- 30.11 Any party may examine and cross-examine witnesses to the extent necessary to ensure a fair process.

## **31. TECHNOLOGICAL MEANS**

- 31.1 The Court may also receive testimonies and arguments by videoconference, telephone conference or any other technological means it deems appropriate.

## **32. PUBLIC HEARING**

- 32.1 Hearings will be open to the public except when they are private hearings pursuant to section 34 of this regulation. However, in exceptional circumstances, access to hearings may be restricted or may be provided through virtual platforms.

**33. PUBLICATION BAN**

33.1 Even at a public hearing, the Court may prohibit or restrict the disclosure, publication or broadcasting of testimonies, dissemination of information or documents identified by the Court where required to preserve public order or if required for confidentiality purposes to ensure the proper administration of justice.

The Court may also omit the names of the persons concerned by a decision when it believes the decision contains confidential information the disclosure of which could be prejudicial to those persons.

**34. PRIVATE HEARINGS**

34.1 The Court may, on an application of a party or on its own initiative, order hearings or a part thereof to be held in private where necessary to maintain public order or confidentiality. When the hearing is held in private the minutes will be confidential.

**35. MINUTES**

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

- 1) the date and time of the beginning and end of the hearing, and where it takes place;
- 2) the name of the Justice in attendance;
- 3) the names and addresses of the parties and, where applicable, those of their representatives and witnesses;
- 4) the name and address of any stenographer;
- 5) the name and address of any interpreter;
- 6) the type of hearing;
- 7) the exhibits filed;
- 8) any admissions made by the parties;
- 9) incidental proceedings and objections;
- 10) the date on which an act or action must be carried out;
- 11) all orders and decisions made by the Court;
- 12) a summary of the discussion during the hearing; and
- 13) the date on which the matter is taken under advisement.

35.2 In addition, where the Court ordered a publication ban or the hearing is private pursuant to sections 33 and 34 respectively, the minutes will contain the following information, as applicable:

- 1) a publication ban was ordered and the nature of the publication ban;
- 2) the hearing was private; and
- 3) the minutes are confidential.

35.3 A copy of the minutes will be maintained by Justice Services.

**36. RECORDING OF HEARING**

- 36.1 Hearings will be recorded in a manner that ensures the accurate reproduction of the proceedings and may include stenographic notes, video recording or audio recording.
- 36.2 No other recording devices will be permitted to be used at a hearing.
- 36.3 In no case may images be recorded, nor may all or part of a video or audio recording be broadcasted.

**37. REPLACEMENT OF JUSTICE**

- 37.1 Where a Justice is unable to continue a hearing or unable to render a decision, another Justice selected by the Commissioner of Justice will continue the hearing.
- 37.2 In the case of oral evidence already produced, the replacement Justice may rely on the notes and minutes of the hearing or on the stenographer's notes or the recording of the hearing.

The same rule also applies in the case of a hearing continued after a Justice who began to hear the matter ceases to hold office.

**38. DECORUM**

- 38.1 Every person attending a hearing must be dressed appropriately and behave with dignity and in a respectful manner. The person must refrain from doing anything that could disrupt the hearing.

**SECTION IV - RECUSATION**

**39. GENERAL**

- 39.1 The Justice must consider and actively inquire into any circumstances that might give rise to a potential conflict of interest or grounds for a reasonable apprehension of bias, as defined in the *Code of Conduct for Justices of the Peace for the Court of Kahnawà:ke*.
- 39.2 Once a potential conflict of interest or grounds for a reasonable apprehension of bias is identified, the Justice must immediately take the appropriate steps as set forth in this regulation.
- 39.3 No Justice will recuse themselves from hearing a matter unless there is a direct conflict of interest.
- 39.4 The Commissioner of Justice will not re-assign a case unless there is a potential conflict of interest or grounds for a reasonable apprehension of bias that would bring the administration of justice into disrepute.

**40. CONFLICT OF INTEREST**

- 40.1 The Justice must immediately inform the Commissioner of Justice if they are in a direct conflict of interest as defined in the *Code of Conduct for Justices of the Peace for the Court of Kahnawà:ke*. The Commissioner of Justice will re-assign the file in accordance with section 37.1 of this regulation.

**41. POTENTIAL CONFLICT OF INTEREST OR REASONABLE APPREHENSION OF BIAS PRIOR TO COMMENCING HEARING**

41.1 A Justice must immediately inform the Commissioner of Justice if they become aware, prior to commencing a hearing, that circumstances exist that:

- 1) gives rise to a potential conflict of interest on the part of the Justice; or
- 2) may be grounds for a reasonable apprehension of bias.

41.2 The Justice will discuss the potential conflict or grounds for reasonable apprehension of bias with the Commissioner of Justice. The Commissioner of Justice will either re-assign the file or direct the Justice to discuss the matter with the parties to see if there are any objections with them hearing the case.

If there are no objections, the Justice will proceed with hearing the case.

If there is an objection the Commissioner of Justice will re-assign the file in accordance with section 37.1 of this regulation.

41.3 The Commissioner of Justice will record the basis for the potential conflict of interest or grounds for a reasonable apprehension of bias.

**42. POTENTIAL CONFLICT OF INTEREST OR REASONABLE APPREHENSION OF BIAS RAISED BY PARTY DURING HEARING**

42.1 When an allegation of conflict of interest or reasonable apprehension of bias is raised by a party during a hearing, the Justice will address the allegations in writing.

42.2 If the Justice does not recuse themselves, the party may, if they still reasonably believe there exists a conflict of interest or grounds for a reasonable apprehension of bias, submit an incidental request to another Justice who will inquire into the matter and will render a decision at the earliest available opportunity. The Justice's decision will be final and without appeal.

The parties may also, if they no longer believe there exists a conflict of interest or grounds for a reasonable apprehension of bias, waive their right to request the recusal of the Justice. If both parties waive their right, the Justice will continue hearing the matter. The waiver will be noted in the minutes.

**43. POTENTIAL CONFLICT OF INTEREST OR REASONABLE APPREHENSION OF BIAS RAISED BY JUSTICE DURING HEARING**

43.1 When a Justice becomes aware during a hearing of a potential conflict of interest, or of facts that are grounds for a reasonable apprehension of bias, they will discuss the potential conflict with the parties.

43.2 The parties may, after hearing the Justice, waive or invoke their right to request the recusal of the Justice.

If both parties waive their right, the Justice will continue hearing the matter. The waiver will be noted in the minutes. If one of the parties invokes their right to request recusal, the Justice will recuse themselves.

The Justice must immediately inform the Commissioner of the waiver or recusal. The Commissioner will re-assign the file in accordance with section 37.1 of this regulation.

**SECTION IV - DECISIONS BY COURT**

**44. GENERAL**

- 44.1 Justices will render decisions on the merits of a case, based on the law and admissible evidence presented during the proceeding.
- 44.2 Justices will apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval from any person or institution must not deter a Justice from making the decision they believe is correct based on the law and admissible evidence.
- 44.3 Every decision rendered by the Court must be communicated in clear and concise terms to the parties and to every other person who has an interest in the outcome.
- Every decision terminating a matter, even a decision communicated orally to the parties, must be in writing together with the reasons on which it is based.
- 44.4 The Court may not decide a matter if the parties have not been heard or summoned.
- It is exempted from this requirement when granting an uncontested request for eviction order or incidental request. The Court is also exempted if all the parties consent to proceeding on the basis of the record, subject to the power of the Court to summon the parties to hear them.
- In addition, the Court may proceed and make a decision where a party that has been summoned:
- 1) does not appear at the time fixed for the hearing without having provided a valid excuse for their absence, or
  - 2) appears at the hearing but refuses to participate.
- 44.5 Any order made by the Court during a proceeding for a hearing to be:
- 1) held *in camera*; or
  - 2) subject to a publication ban
- will be stated expressly in the decision.

**45. TIMEFRAME FOR FINAL DECISION**

- 45.1 A final decision must be rendered within thirty (30) days after being taken under advisement. However, the Commissioner of Justice may grant an extension for a valid reason.

**46. INABILITY TO SIGN**

- 46.1 Where a Justice is unable to act or has ceased to hold office and cannot sign the decision given at the hearing, another Justice will sign the decision or designate another Justice to do so.

**47. DISTRIBUTION OF DECISION**

- 47.1 A copy of the decision will be sent to all parties, their representative and to any other person specified by law.
- 47.2 A copy of the reasons for decision must also be filed at the offices of Justice Services.

**48. PUBLICATION OF DECISION**

- 48.1 A copy of the reasons for decision will be published by Justice Services and made available to the public and, where applicable, in accordance with any publication ban.

**49. CORRECTION**

- 49.1 Upon written request by a party or at the Justice's own initiative, any decision containing an error in writing or in calculation or any other clerical error may be corrected, in the record and without further formality, by the Justice who made the decision.

Where the Justice is unable to act or has ceased to hold office, the Commissioner of Justice will designate another Justice to do so.

The corrected decision will be provided to the parties, their representative and any other person specified by law.

**50. REVIEW OR REVOCATION OF DECISION**

- 50.1 The Court on a request may review or revoke any final decision it has made:

- 1) where a new fact is discovered which, had it been known in time, could have warranted a different decision;
- 2) where a party, owing to reasons considered sufficient, could not be heard; or
- 3) where a substantive or procedural defect is of a nature likely to invalidate the decision.

In the case described in subparagraph (3), the decision may not be reviewed or revoked by the Justice having made the decision.

- 50.2 Requests for review or revocation of a final decision is brought before the Court by filing them at the office of the Court within thirty (30) days of the decision concerned or within thirty days (30) following the date of discovery of a new fact susceptible of warranting a different decision. The request will refer to the decision concerned, state the grounds invoked to support it and include all the information required by section 13.1 of this regulation.

If the petitioner is not one of the parties, the request must also indicate the petitioner's name, address, other contact information, standing and interest in having the decision reviewed or revoked.

Justice Services will make available a request for review or revocation form to assist parties with submitting a request for review or revocation to the Court.

- 50.3 The clerk will send a copy of the petition to the other parties, who may respond to it in writing within thirty (30) days after receiving it.
- 50.4 The Court will proceed on the basis of the record. However, it may hear the parties if it considers it appropriate or if a party requests it.

**51. APPEAL**

- 51.1 The decision of the Justice to issue an eviction order may be appealed to the Kahnawà:ke Court of Appeal, once operational pursuant to the *Kahnawà:ke Justice Act*.

**52. RETRIEVAL**

- 52.1 The parties must retrieve their exhibits and other documents within one (1) year from the date of final judgment otherwise unclaimed exhibits and other documents will be destroyed.

## **SECTION V - EXECUTION OF EVICTION ORDER**

### **53. EXECUTION OF DECISION**

- 53.1 Once the eviction order is issued, the respondent must leave the Territory and take all of their movable property within ten (10) working days.

### **54. FORCED EXECUTION**

- 54.1 Forced execution will be undertaken by the Compliance Officer if the Respondent fails to leave the Territory and take all of their movable property within ten (10) working days of the issuance of the Eviction Order.

### **55. NOTICE OF EXECUTION**

- 55.1 The Compliance Officer will give execution instructions to a bailiff who will file a notice of execution with the Court.

The notice of execution will include:

- 1) a copy of the judgment to be executed, including its date;
- 2) the name and contact information of the Compliance Officer, the Respondent and the bailiff;
- 3) a description of the execution measures to be taken; and
- 4) a description of the immovable to be vacated and its specific location.

Justice Services will make available a notice of execution form to assist the bailiff when filing a notice of execution at the offices of the Court.

- 55.2 The bailiff will serve the notice of execution to the Respondent at least five (5) days before it is executed and notify the Compliance Officer of this. The notice of execution will order the Respondent to remove all movable property or pay the costs incurred for its removal and informs them that failing to comply, the movable property will be deemed to have been abandoned.

- 55.3 The landlord or owner of a dwelling will be advised by the Compliance Officer that a tenant is to be evicted, where the landlord or owner is known. Failure to notify the landlord or owner will not have any effect on the validity of the notice of execution.

### **56. USE OF FORCE**

- 56.1 If forced entry must be used to enter a premises and/or any sheds, storage units or spaces occupied by the Respondent for the purpose of removing property or evicting a person, the bailiff, before entering, must obtain the prior authorization of a Justice. This authorization gives the bailiff the right to enter the premises, with whatever assistance the bailiff deems necessary.

If concerned about possible difficulties, the bailiff may request the assistance of a Peacekeeper.

Justice Services will make available an authorization to use force form to assist the bailiff when requesting the prior authorization of a Justice.

**57. POSTPONEMENT OF EXECUTION**

57.1 The removal of a person from the Territory in accordance with an Eviction Order must be temporarily stayed if:

- 1) the person is the parent or guardian of one or more children under the age of six (6) who reside with the person; and
- 2) the decision to remove the person is issued between November 1st and April 1st.

**58. NO LIABILITY**

58.1 Unless they acted in bad faith or committed an intentional or gross fault, bailiffs cannot be held liable for the exercise of functions that are assigned to them in forced execution matters and relate to an eviction, the removal of property or the sale under judicial authority without condition, of the Respondent's property or of a passenger vehicle.

**SECTION VI - FINAL**

**59. COMING INTO FORCE**

59.1 This regulation comes into force on the date fixed by Mohawk Council Executive Directive.

**60. AMENDMENT**

60.1 This regulation may be amended by Mohawk Council Executive Directive in accordance with the Community Decision-Making and Review Process for regulations.