

# MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW

K.R.L. c. E-1

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## PREAMBLE

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

We have inherent, Aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples* 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 Indigenous Peoples and the rights set out in our treaties with foreign governments. These rights cannot be extinguished, diminished or affected without our consent.

As part of 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, identities, traditions, languages and institutions and with respect to our connection to our people, children, land and resources.

We have consistently and historically exercised the right to determine the rules for the selection of our political leadership.

This Law is an affirmation of our inherent, Aboriginal and Treaty rights to establish and maintain our own process to nominate and select the political representatives of the Kanien'kehá:ka of Kahnawà:ke.

## PART I - GENERALITIES

### **1. JURISDICTION**

- 1.1 The jurisdiction under which this Law is enacted is more fully described in the Preamble.
- 1.2 This Law is an exercise of the collective rights of the Kanien'kehá:ka of Kahnawà:ke to determine the process for nominating and selecting the political representatives of the Kanien'kehá:ka of Kahnawà:ke. This Law is paramount to and supersedes the laws, regulations and policies of the governments of Canada and Quebec, or any other government, concerning this matter or matters related thereto.

### **2. PURPOSE**

- 2.1 This Law provides the criteria and procedures for the nomination and selection of a twelve (12) member Ratitsénhaienhs (Council) composed of eleven (11) Ratitsénhaienhs and one (1) Ohén:ton Í:ienté' / Ohén:ton Í:rate' ne Ratitsénhaienhs.

### **3. SHORT TITLE**

- 3.1 This Law may be cited as the "MCK Election Law".

### **4. DEFINITIONS**

- 4.1 In this Law:

**CANDIDATE:** Means a person who has been duly nominated, has accepted their nomination, declared their candidacy and who has been verified as eligible to hold the position of Ohén:ton Í:ienté' / Ohén:ton Í:rate' ne Ratitsénhaienhs or Ietsénhaienhs/ Ratsénhaienhs;

**CRIMINAL OFFENSE:** Includes indictable and felony offenses such as homicide, attempted homicide, sexual assault, rape, burglary, robbery, theft, aggravated assault, arson, embezzlement, illegal drug related offenses, fraud, breach of trust of any legally recognized jurisdiction. For greater certainty, the term "criminal offense" includes any conviction for an indictable offense, three (3) summary conviction offenses committed within a period of five (5) years or where a guilty plea has been entered in a Court for an offense regardless of a subsequent discharge at sentencing. The six (6) year ban from holding office will commence after the last sentence has been served in full. Criminal conviction for a tobacco charge (possession, manufacture or transport) will not be considered as a criminal offense for the purpose of this Law;

**ELECTION:** Means an election of the Ratitsénhaienhs (Council) held pursuant to this Law, and includes the term "selection";

**ELECTION DAY:** Means the first Saturday in July beginning in 2018 and every three (3) years thereafter;

**ELECTOR:** Means an individual who meets the eligibility criteria set out in section 26.1 of this Law to vote in an Election;

**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;

**GENERAL MANAGER of the OFFICE OF THE KAHNAWÀ:KE KANIEN'KEHÁ:KA REGISTRY:** Means the individual responsible for the effective operations of the Kahnawà:ke Kanien'kehá:ka Registry, or designate;

**NOMINATION DAY:** Means the date set by the Electoral Officer on which nominations are received in accordance with the procedures in this Law;

**NOMINEE:** Means a person who has been nominated but whose eligibility has not yet been verified as a candidate;

**NOMINATOR(S):** Means an Elector(s) who proposes a person for a position on Ratitsénhaienhs (Council);

**ORDINARILY RESIDENT:** Means having lived in Kahnawà:ke for not less than six (6) consecutive months prior to the election in question and includes persons who return to Kahnawà:ke on a regular basis from their place of employment, training or schooling as well as a person who does not reside in Kahnawà:ke due to housing shortages;

**POLLING LOCATION:** Means the physical location and property where the Election is held on Election Day;

**RATITSÉNHAIIENHS (Council):** Means the elected body of the Mohawk Council of Kahnawà:ke;

**REPRESENTATIVE:** Means an individual chosen by a Candidate to attend at the Polling Location on Election Day together with the Candidate to observe the counting of the votes; and must be eligible to vote in the election on Election Day;

**VOTERS LIST:** Means the list of Electors prepared and maintained by the General Manager of the Office of the Kahnawà:ke Kanien'kehá:ka Registry.

## **PART II - ADMINISTRATION OF ELECTION**

### **5. ELECTION OF ELECTORAL OFFICER**

- 5.1 The Electoral Officer will be elected by persons who are eighteen (18) years or older on the date of the election, who are recognized on the Kahnawà:ke Kanien'kehá:ka Registry and who do not currently have their benefits and entitlements suspended.
- 5.2 Applicants must sign a Privacy Waiver for the purpose of verifying that they meet the eligibility criteria provided in this Law.
- 5.3 The Kahnawà:ke Justice Commission will issue a notice inviting interested persons to submit their candidacies for the position of Electoral Officer. This will take place not less than ninety (90) days prior to Election Day. The period during which submissions are received will be fourteen (14) days.
- 5.4 The verification and screening process for the position of Electoral Officer will be in accordance with procedures established by resolution of the Kahnawà:ke Justice Commission. This process will be completed no later than fifteen (15) days after the close of submissions.
- 5.5 The Kahnawà:ke Justice Commission will forward the names of eligible candidates to the Executive Office and the Executive Office will publish the names of eligible candidates for the position of Electoral Officer as well as the date, time and place when the election will be conducted. This date may not be less than sixty (60) days before Election Day. Polls will be open for a minimum of two (2) consecutive hours.
- 5.6 The eligible candidate for the position of Electoral Officer who receives the highest number of votes will be elected to the position.
- 5.7 If after the verification and screening process is completed only one candidate is eligible that candidate will be elected by acclamation to the position of Electoral Officer and no election will be held.
- 5.8 If after the verification and screening process is completed no candidate is eligible, the Kahnawà:ke Justice Commission will seek out an eligible candidate and appoint said candidate to the position of Electoral Officer, on a date not less than sixty (60) days before Election Day.

### **6. DUTIES OF ELECTORAL OFFICER**

- 6.1 In addition to any other duties provided in this Law, in order to conduct the Election in a fair, transparent and accountable manner the Electoral Officer will:
- (a) declare that a vote will be held on Election Day;

- (b) establish the date for Nomination Day, which will be at least thirty (30) days before Election Day and conduct the nomination and verification process for Candidates;
- (c) refuse to accept the nomination of any Candidate who is not eligible to hold office or whose nomination does not comply with this Law and its Regulations;
- (d) arrange for a meeting to be held at least five (5) days before Election Day, at which the Electors may hear the Candidates speak;
- (e) ensure that an adequate supply of this Law and its Regulations are made available to the public at Mohawk Council of Kahnawà:ke offices during the entire electoral process up to and including the Election Day;
- (f) conduct and supervise the Election in accordance with this Law and its Regulations;
- (g) make any decision and take any reasonable measure that is required to apply this Law and the Regulations;
- (h) maintain and record in a log book all problematic events or issues, which occur, and decisions taken from the time he or she is appointed until the time of the official announcement of elected Candidates.

6.2 An Electoral Officer is not entitled to vote in the election for which he or she acts as the Electoral Officer.

6.3 Should the Electoral Officer fail to perform any duty established by this Law, or resigns prior to the Election, the Kahnawà:ke Justice Commission will appoint an eligible candidate to replace the Electoral Officer without undue delay.

## 7. ASSISTANT ELECTORAL OFFICER AND POLLING CLERKS

7.1 The Electoral Officer will appoint for the duration of the Election, an Assistant Electoral Officer, who shall not be the Electoral Officer's spouse or an immediate family member, and one or more Polling Clerks all of whom shall perform the duties assigned to them and as directed by the Electoral Officer.

7.2 Before they are appointed, the potential Assistant Electoral Officer and potential Polling Clerks must sign a Privacy Waiver for the purpose of verifying that they meet the eligibility criteria provided in this Law.

7.3 The Assistant Electoral Officer and Polling Clerks are entitled to vote in the election for which they have been appointed.

7.4 The Assistant Electoral Officer will assist the Electoral Officer in all aspects of the Election, as directed by the Electoral Officer.

7.5 Polling Clerks will perform the duties assigned to them by this Law and its Regulations and will assist the Electoral Officer in scrutinizing the processes and results of the vote and will perform such other duties as directed by the Electoral Officer.

## 8. **ELIGIBILITY REQUIREMENTS**

8.1 The Electoral Officer, Assistant Electoral Officer and Polling Clerks:

- (a) must be over the age of twenty-one (21) years;
- (b) must be recognized as a Kanien'kehá:ka of Kahnawà:ke pursuant to the *Kanien'kehá:ka of Kahnawà:ke Law* and must not currently have their benefits and entitlements suspended;
- (c) must be ordinarily resident in Kahnawà:ke; and
- (d) must not have, within the previous six (6) years, pled guilty, been found guilty, been convicted and/or sentenced for a Criminal Offense. The six (6) year ban commences only after all sentences have been served in full.

8.2 In addition to these eligibility requirements the Electoral Officer must also meet the requirements contained in their terms of reference and must have the skills and experience necessary to conduct the Election in a fair, transparent and accountable manner, as evaluated by the Kahnawà:ke Justice Commission.

8.3 No person may be appointed to act in any capacity related to the election process who was a member of the Ratitsénhaienhs (Council) at any time during the year immediately preceding the Election or who is, or intends to be, a Candidate in the Election.

## 9. **REMUNERATION AND BUDGET**

9.1 The Electoral Officer, Assistant Electoral Officer and Polling Clerks are to be remunerated for duties performed.

9.2 An adequate budget will be allocated by the Executive Office of the Mohawk Council of Kahnawà:ke. The budget must include adequate funding to conduct an election under this Law. The Electoral Officer is responsible for the management and accountability of these funds in accordance with Mohawk Council of Kahnawà:ke's administration standards and the roles and responsibilities set forth in their contract.

## PART III - ELECTIONS

### 10. GENERAL

10.1 There will be an Election held every three (3) years for the Mohawk Council of Kahnawà:ke, which is a twelve (12) member Ratitsénhaienhs (Council) composed of eleven (11) Ratitsénhaienhs and one (1) Ohén:ton Í:iente'/Ohén:ton Í:rate' ne Ratitsénhaienhs.

10.2 The Election will be held on Election Day.

10.3 The positions of Ohén:ton Í:iente'/Ohén:ton Í:rate' ne Ratitsénhaienhs and Ratitsénhaienhs are filled by the Candidates receiving the highest number of votes.

### 11. TERMS OF OFFICE

11.1 The term of office of the Ohén:ton Í:iente'/ Ohén:ton Í:rate' ne Ratitsénhaienhs and each Ratsénhaienhs/Ietsénhaienhs will be three (3) years.

11.2 There is no limitation on the number of terms of office the Ohén:ton Í:iente'/ Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs may serve.

### 12. WHO CAN HOLD OFFICE

12.1 To be eligible to hold the office of Ohén:ton Í:iente'/ Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs, a person:

- (a) must be recognized as a Kanien'kehá:ka of Kahnawà:ke pursuant to the *Kanien'kehá:ka of Kahnawà:ke Law* and must not currently have their benefits and entitlements suspended;
- (b) must have fifty (50 %) percent or more Kanien'kehá:ka Blood quantum;
- (c) must be Kanien'kehá:ka of Kahnawà:ke and not of any other Kanien'kehá:ka community;
- (d) must not be married to or living common-law with a non-Native person;
- (e) must be a minimum of twenty-one (21) years of age;
- (f) must be ordinarily resident;
- (g) must declare all their private business holdings the purpose of which is to verify conflicts of interest if elected and/or respond to public inquiry of Ohén:ton Í:iente'/Ohén:ton Í:rate' ne Ratitsénhaienhs and Ratsénhaienhs/Ietsénhaienhs;

- (h) must not have, within the previous six (6) years, pled guilty, been found guilty, been convicted and/or sentenced for a Criminal Offense. The six (6) year ban commences only after all sentences have been served in full;
- (i) must not have been removed from office as Ohén:ton Í:iente'/ Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs, if served in the term immediately before the current Election; and
- (j) must be willing to submit to and then pass a test for illegal drugs, after being elected to the position of Ohén:ton Í:iente'/Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs.

### 13. NOMINATION PROCEDURE

- 13.1 The Electoral Officer will set the date of Nomination Day, which will be not less than thirty (30) days before Election Day.
- 13.2 Not less than seven (7) days before Nomination Day, the Electoral Officer will post a notice of a date, time and place for the purpose of nominating Candidates for election. The notice will indicate the procedures for nominating Candidates, as provided in this Law and its Regulations.
- 13.3 Nominations of Candidates will be held between the hours of ten and twelve in the morning (10:00 a.m. to 12:00 noon) on Nomination Day. Nominations will not be accepted after the close of the nomination period.
- 13.4 Any two (2) Nominators may nominate and second any person eligible to hold office, as a candidate for the position of Ohén:ton Í:iente'/ Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs. An Elector can participate in a maximum of two (2) nominations. For further clarity, an Elector may nominate one (1) individual for the position of Ohén:ton Í:iente'/ Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs and/or second a nomination for (1) individual for the position of Ratsénhaienhs/Ietsénhaienhs but cannot second and nominate for the same position.
- 13.5 In order to be valid, a nomination must be made on the Nomination Form prescribed by regulation and duly completed by the Nominators nominating and seconding the Candidate and submitted to the Electoral Officer before the close of the nomination period. Upon receipt, the Electoral Officer will sign the Nomination Form acknowledging receipt and will provide copies to the persons submitting the form.
- 13.6 A second nomination, if any, must be presented by two (2) other Nominators.
- 13.7 A person may be nominated for Ohén:ton Í:iente'/ Ohén:ton Í:rate' ne Ratitsénhaienhs, Ratsénhaienhs/Ietsénhaienhs or both.

- 13.8 A Candidate can only run for one (1) position and must clearly indicate for which position they intend to run in their declaration of candidacy.
- 13.9 After twelve noon (12:00 noon) on Nomination Day, the Electoral Officer will announce the names of all Nominees, without unreasonable delay, and will provide a copy of this Law and the Regulations to each Nominee.
- 13.10 The announcement of the names of nominees by the Electoral Officer at the close of the nomination period does not qualify any particular nominee as a candidate. Each nomination is subject to the verification procedure set out in this Law and its Regulations.

#### **14. VERIFICATION PROCEDURE**

- 14.1 Within three (3) days of the close of the nomination period, each Nominee must duly complete and submit to the Electoral Officer each of the following statements, the form of which will be prescribed by Regulation:
- (a) Declaration of Candidacy;
  - (b) Declaration of Eligibility;
  - (c) Declaration of Criminal Offence Charge Pending;
  - (d) Declaration of Business Holdings and this declaration will be made available to any Elector who wishes to see it prior to Election Day; and
  - (e) Privacy Waiver;
- failing which the nomination becomes null and void.
- 14.2 The Privacy Waiver provided by each Nominee is for the sole purpose of authorizing the Electoral Officer to conduct such inquiries and obtain such information (the "verification information") as is required to verify the Nominee's eligibility to hold the office of Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs. Except as provided for by this Law, the Electoral Officer will hold the verification information in the strictest confidence and will not copy the information or provide it to any person other than the Nominee, at his or her request.
- 14.3 Following the close of the nomination period, the Electoral Officer will review each nomination to verify whether the nomination is valid and whether the Nominee meets the criteria for persons eligible to hold the office of Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs, as set out in this Law.
- 14.4 Within seven (7) days after the close of the nomination period, the Electoral Officer will contact each Nominee to advise whether their nomination has been accepted or refused.

- 14.5 The acceptance of a nomination by the Electoral Officer qualifies the Nominee as a Candidate in the Election.
- 14.6 The Electoral Officer may refuse a nomination:
- (a) that has been improperly filed;
  - (b) that is inaccurate, misleading or incomplete;
  - (c) that is otherwise invalid.
- 14.7 In the event a nomination is refused, the Electoral Officer will specify the reason for the rejection.
- 14.8 The Electoral Officer will, without unreasonable delay, post a public notice listing the names of the Candidates for positions of Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs and Ratitsénhaienhs.
- 14.9 In the event that more than one (1) Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs is nominated and verified as a Candidate and more than the required number of Ratitsénhaienhs are nominated and verified as Candidates, the Electoral Officer will declare that an Election will be held for those positions on Election Day.
- 14.10 Where, immediately before the close of a nomination period, there is an insufficient number of Nominees to fill all positions on Ratitsénhaienhs (Council), the Electoral Officer, will declare the first nomination period adjourned and will re-open the nomination period for a second session two (2) days later. No nomination period will consist of more than two (2) sessions.
15. **WITHDRAWAL OF CANDIDACY**
- 15.1 The withdrawal of a Candidate's candidacy must be in the form of a sworn statement and signed in the presence of the Electoral Officer or a commissioner of oaths. The sworn statement must be addressed to the attention of the Electoral Officer and must contain a statement to the effect that the Candidate freely and voluntarily withdraws their candidacy from the election. The sworn statement must be received by the Electoral Officer before the hour of twelve noon (12:00 p.m.) on the Wednesday immediately preceding Election Day.
- 15.2 If the ballots have already been printed at the time of the withdrawal of a candidacy, the Electoral Officer will cause the name of the withdrawing Candidate to be blacked out and notices of the Candidate's withdrawal will be posted in conspicuous locations within the Mohawk Territory of Kahnawà:ke and at the Polling Location.
- 15.3 If, after a Candidate withdraws, there remains only one (1) Candidate for Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs or the remaining number of Candidates for

Ratitsénhaienhs is equal to the number to be elected, the Electoral Officer will declare those Candidates elected by acclamation.

16. **ELECTION BY ACCLAMATION**

- 16.1 Election by acclamation is declared if there is only one (1) Candidate to serve as Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs . The Electoral Officer will declare the election uncontested and further declare the Candidate duly elected.
- 16.2 If the number of Candidates to serve as Ratitsénhaienhs is equal to the number of positions required, the Electoral Officer will declare the elections uncontested and further declare the Candidates duly elected.
- 16.3 The term of office of a Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs who is elected by acclamation will begin immediately upon the end of the Incumbent Council's term of office as defined in s. 30.2 of this Law.
- 16.4 If the Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs and eleven (11) Ratitsénhaienhs are all elected by acclamation then their term of office will begin immediately upon the end of the Incumbent Council's term of office as defined in s. 30.2 of this Law.

**PART IV**

17. **PREPARATION OF THE POLL**

- 17.1 The Electoral Officer will prepare and manage the poll in accordance with the rules prescribed by regulation.
- 17.2 The form and composition of the ballots will be prescribed by regulation.

18. **POLLING LOCATION**

- 18.1 The Electoral Officer and Assistant Electoral Officer will provide compartments at the polling place where Electors can mark their ballots in privacy and free from observation of any other person.
- 18.2 Except as specifically provided in this Law, not more than one (1) Elector will be permitted in the vicinity of a polling compartment at any one time.
- 18.3 The Electoral Officer may request one or more officers of the Kahnawà:ke Peacekeepers to be present at the polling location to aid in the maintenance of peace and order at the Election.

- 18.4 Any person, who by reason of intoxication or other conduct affecting peace and order of the Election, will be required to leave the Polling Location and their right to vote in that Election will be forfeited.
- 18.5 The Electoral Officer will ensure that no person blocks the entrance or hinders access to a Polling Location.
- 18.6 The Electoral Officer will ensure that no partisan election campaign advertising will be present at the Polling Location.
- 18.7 The Electoral Officer will ensure that no fundraising activities will occur at the Polling Location.

19. **ELECTION PROCEDURES**

- 19.1 The poll will be kept open between nine (9 a.m.) o'clock in the morning until six (6 p.m.) o'clock in the evening (local time) on Election Day.
- 19.2 Each person who presents himself or herself for the purpose of voting will state his or her name to the Polling Clerk and, if satisfied as to the identity of the Elector and that the name of the Elector is entered on the Voters List at the Polling Location, the Polling Clerk will initial the back of a ballot and provide it to the Elector in order to cast his or her vote.
- 19.3 The Polling Clerk will verify that the person is an eligible Elector, hand the Elector a ballot and register the Elector as having voted once the ballot is returned.
- 19.4 If the Polling Clerk has reason to believe that a person requesting to vote is not an Elector, has already voted or is falsely representing him or herself, the Polling Clerk will refer the Elector to the Electoral Officer who will determine whether the person is entitled to vote.

20. **VOTERS LIST**

- 20.1 The General Manager of Office of Kahnawà:ke Kanien'kehá:ka Registry will, not less than one (1) week before Election Day, prepare the Voters List that will be used for the selection of Ratitsénhaienhs and Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs.
- 20.2 The Voters List will consist of the names of all Electors.

21. **VOTING**

- 21.1 An Elector will cast a ballot in accordance with the process for marking and depositing a ballot as prescribed by regulation.
- 21.2 All ballots cast on Election Day will be at the Polling Location. No off-site voting will be permitted.

- 21.3 In the event of a perceived error on the Voters List on polling day, or in the event an Elector's name has been inadvertently omitted, an Elector may request the Electoral Officer to make a correction.
- 21.4 Where a person's name is not included on the Voters List, the Electoral Officer, and Assistant Electoral Officer will immediately make such inquiries as are necessary to confirm whether the person is an Elector and is eligible to vote. Only after such confirmation will the person be given a ballot and permitted to vote.
- 21.5 The Electoral Officer or Assistant Electoral Officer should refer a person to representatives of the Office of the Kahnawà:ke Kanien'ha:ká Registry to clarify why that person is not on the Voters List.
- 21.6 Every Elector who is inside the building being used as the Polling Location at the time fixed for closing the poll will be entitled to vote.

## 22. **SPECIAL POLL**

- 22.1 The Electoral Officer will hold one or more special polls not more than ten (10) days prior to Election Day. The special poll is for the purpose of receiving the votes of Electors who expect to be unable to cast their votes on Election Day.
- 22.2 For purposes of clarity, special polls will be held at senior and healthcare institutions so that residents may cast their votes. The Electoral Officer may, upon request, visit the homes of Electors who cannot leave their residences due to medical restrictions.
- 22.3 A special poll will also be held for Electors who are unable to cast their votes on Election Day due to other reasonable circumstances, including work schedules.
- 22.4 Should a Candidate withdraw his or her candidacy prior to Election Day but after the date of a special poll, the ballots cast in the special poll remain valid, other than any votes cast for the withdrawing Candidate, which will be deemed to be null and void.
- 22.5 The special poll will be located at a convenient central location on the Mohawk Territory of Kahnawà:ke and will be open for at least two (2) consecutive hours, at the discretion of the Electoral Officer.
- 22.6 Notice of a special poll will be given at least seven (7) days in advance, and will include reference to the date, time and place of the special poll.

## 23. **VOTING AT A SPECIAL POLL**

- 23.1 Voting at a special poll will be conducted in the same manner as voting on Election Day, with such modification or adaptation of this Law or applicable regulations as the Electoral Officer deems necessary.

24. **CRITERIA FOR VOTING IN A SPECIAL POLL**

- 24.1 The Electoral Officer may, at his or her discretion, approve a request from an Elector to cast a ballot in a special poll, if:
- (a) a written request is received by the Electoral Officer at least seventy-two (72) hours before the time of a special poll; and
  - (b) the reasons for the request are deemed by the Electoral Officer to be satisfactory.
- 24.2 Without limiting the discretion of the Electoral Officer, some possible reasons for a person to cast a ballot in a special poll include: hospitalization, education, training or employment commitments or a physical handicap.

25. **SPECIAL POLL BALLOTS AND SPECIAL POLL LISTS**

- 25.1 All ballots cast at a special poll will be retained in a locked ballot box and remain in a secure location and in the legal possession of the Electoral Officer until the close of the poll on Election Day.
- 25.2 The Electoral Officer will maintain a list of Electors who have voted at a special poll. The Electoral Officer will direct the General Manager of the Office of the Kahnawà:ke Kanien'kehá:ka Registry to remove the names of these Electors from the Voters List prior to Election Day.

26. **ELIGIBILITY TO VOTE**

- 26.1 Subject to the other provisions of this Law, to be eligible to vote in an Election, including a special poll, an Elector:
- (a) must be recognized on the Kahnawà:ke Kanien'kehá:ka Registry and must not currently have their benefits and entitlements suspended; and,
  - (b) must be at least eighteen (18) years of age on Election Day.

27. **POLLING DAY DUTIES**

- 27.1 The Polling Clerks will record, in a specific log, any problems encountered with Electors or other persons and any decisions of the Electoral Officer.
- 27.2 The Electoral Officer, Assistant Electoral Officer or Polling Clerk will explain the voting procedure to any Elector at his or her request.

- 27.3 The Electoral Officer will ensure that no partisan election campaign advertising can be seen at the Polling Location, and ensure that no person enters the Polling Location with such advertising displayed.
- 27.4. The Electoral Officer will ensure that no fundraising is done at the polling location, including the grounds surrounding the premises.

## **PART V POST-ELECTION**

### **28. COUNTING THE VOTES**

- 28.1 After the closing of the poll on Election Day, the Electoral Officer or Assistant Electoral Officer will see to it that all persons vacate the polling place, with the exception of the Polling Clerks, on-duty Kahnawà:ke Peacekeepers, Candidates who wish to attend the counting of the votes and one (1) Representative for each Candidate.
- 28.2 The rules concerning preparation of any counting stations and the procedure for counting and rejecting votes will be prescribed by regulation.

### **29. RECOUNT OF VOTES**

- 29.1 The Electoral Officer will recount the votes for a position to be filled at a Ratitsénhaienhs (Council) Election:
- (a) where it appears that two (2) or more Candidates have an equal number of votes, and an additional vote would entitle one (1) or more of them to be elected, or;
  - (b) at the request of an affected Candidate, where there are ten (10) or less votes separating a Candidate who is elected and a Candidate who is not elected.

The Electoral Officer will organize and supervise a recount of the ballots affecting the Election, which may be attended by any Candidate or their representative.

- 29.2 A recount should take place immediately at the Polling Location and if, after the recount, one or more Candidates are still not satisfied, a second recount should be made or even a third, depending on the circumstances. The Electoral Officer will, in his or her sole discretion, decide when the number of recounts has been satisfactory for the purpose.
- 29.3 The Electoral Officer, Candidates and the Candidate's representatives will have the right to request a recount of any Candidate's votes. A Candidate or representative cannot refuse a recount.
- 29.4 Where, after one or more recounts of votes, there exists an equal number of votes for each of the two (2) or more Candidates for a position, the Electoral Officer will within seven (7) days of Election Day hold a second poll for those Candidates for that position, with such modification or adaptation of this Law as the Electoral Officer deems necessary.

29.5 If for any reason a recount of votes is requested after the day on which the poll was held, the request must be made in writing by one or more Candidates to the Electoral Officer within forty-eight (48) hours after the poll closed. A recount will take place within seven (7) days.

30. **DECLARATION OF POLL RESULTS**

30.1 Immediately after the completion of the counting of the votes, the Electoral Officer and the Assistant Electoral Officer will tabulate the results and will publicly declare to be elected the Candidates having the highest number of votes.

30.2 The newly elected Ratitsénhaienhs (Council's) term of office will begin upon their swearing of the Oath of Office, within one (1) week after the election results are made public, at which time the incumbent Ratitsénhaienhs (Council's) term of office will end.

30.3 In the event of a recount, the unaffected Candidates will be declared elected and the Electoral Officer will report to the community the results of the recount.

31. **ELECTION MATERIALS**

31.1 The Electoral Officer will have the legal possession and will retain and safeguard all the election materials used in an Election, including the ballots, any ballot boxes, Voters List, poll logs, and a report of the election results for a period of fourteen (14) days after Election Day.

31.2 Fourteen (14) days after Election Day, the Electoral Officer will remit to the Mohawk Council of Kahnawà:ke all the materials used in the Election, except the ballots, if any, which will be destroyed by the Electoral Officer in the presence of two (2) witnesses, who will make a declaration that they witnessed the destruction of ballots. In the event of an appeal, the Electoral Officer will not destroy any ballots until such time as a decision is rendered.

31.3 All other documents related to the Election will be retained for a period of two (2) years.

31.4 No Electoral Officer, Assistant Electoral Officer or Polling Clerk, will divulge any information obtained by him or her with respect to the conduct of an Election, except in the case of a legal proceeding respecting the Election.

32. **PRE-ELECTION REVIEWS**

32.1 Pre-election reviews will be decided by a Justice on a priority basis.

32.2 The Justice will have jurisdiction to hear requests for pre-election reviews until the polls close on Election Day.

- 32.3 The Justice may only review a pre-election decision taken by the Electoral Officer with respect to:
- a) a Candidate's eligibility to run in the Election or to hold office;
  - b) compliance with nomination procedures;
  - c) application or non-application of a provision of the Election Law or its regulations;
  - d) an Elector's eligibility to vote;
  - e) a community member's eligibility to be on the Voters List; or
  - f) any other decision taken by the Electoral Officer prior to the closing of the polls on Election Day.

32.4 Requests for review of a decision of the Electoral Officer will be made by completing the review form established by Justice Services and submitting it to the Court of Kahnawà:ke. Submission will be made by one of the following methods:

- a) in person at the offices of the Court of Kahnawà:ke;
- b) bailiff;
- c) registered mail;
- d) facsimile (fax) transmission, or;
- e) any other way that reasonably ensures proof of reception.

The review will be decided as expeditiously as possible and in such a manner as not to hinder the election process. Requests for review of a decision of the Electoral Officer on Election Day will be submitted to the Clerk of the Court of Kahnawà:ke, who will be available to receive such requests.

32.5 The Justice who reviews the Electoral Officer's decision has discretion on the procedure used to determine the review, provided said procedure is expedient and will not hinder the election process.

32.6 The Justice's decision with respect to any pre-election review is final and is not subject to further appeal.

### 33. **POST-ELECTION APPEALS**

33.1 The appeal procedures set out in this section apply to any matter related to a Ratitsénhaienhs (Council) election. For greater clarity, these appeals do not include any matter which relate to pre-election reviews and decision pursuant to section 32.3 of this Law.

- 33.2 Appeals will be made by completing the appeal form established by Justice Services and submitting it to the Court of Kahnawà:ke. Submissions will be made by one of the following methods:
- a) in person at the offices of the Court of Kahnawà:ke;
  - b) bailiff;
  - c) registered mail;
  - d) facsimile (fax) transmission, or:
  - e) any other way that reasonably ensures proof of reception.
- 33.3 Appeals must be submitted not more than ten (10) days after Election Day.
- 33.4 Appeals may be submitted by any person listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry who has reasonable grounds for believing that:
- (a) there was a corrupt practice in connection with the Election;
  - (b) there was a violation of this Law that might have affected the result of the Election; or
  - (c) a person elected to the position of Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs no longer meets the eligibility criteria set out in this Law or that new facts have come to light which had they been known prior to the Election would have rendered the Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs or Ratsénhaienhs/Ietsénhaienhs ineligible to run for office.
- 33.5 Appeals must state the grounds on which the appeal is based and must be accompanied by copies of any documents and the names of any witnesses the appellant believes to be relevant to the appeal.
- 33.6 The Court of Kahnawà:ke will, within seven (7) days of the receipt of an election related appeal, forward a copy of the appeal together with all related materials by registered mail to the Electoral Officer and to each Candidate involved in the Election.
- 33.7 The Electoral Officer or any Candidate may, within seven (7) days of the receipt of the copy of an appeal, submit to the Court of Kahnawà:ke a written answer to the particulars set out in the appeal, together with any supporting documents and the names of any supporting witnesses using one of the following methods:
- a) in person at the offices of the Court of Kahnawà:ke;
  - b) bailiff;
  - c) registered mail;

d) facsimile (fax) transmission, or:

e) any other way that reasonably ensures proof of reception.

- 33.8 The Court of Kahnawà:ke will appoint a Justice to hear the appeal and the answers, if any, submitted by the Electoral Officer and Candidates.
- 33.9 The Justice appointed to hear the appeal may decide the appeal based solely on the written materials that have been submitted or, if the material that has been received is not adequate for deciding the appeal, conduct such public hearings into the matter as he or she deems necessary.
- 33.10 The Justice will after due consideration, decide the merits of the matters raised in the appeal and order any remedies that may be appropriate. The Court of Kahnawà:ke's decision, with reasons, will be communicated to the appellant, the Electoral Officer and all Candidates either in person, if the matter proceeds to a hearing in the Court of Kahnawà:ke, or in writing sent by registered mail to each party.
- 33.11 The Justice will have fifteen (15) days to render a decision from the date an appeal is heard and will have an additional forty-five (45) days to render a written judgment.
- 33.12 The Justice may in his or her decision, declare that the results of the Election are valid, overturn the Election results in whole or in part to the extent that the violations or wrongdoing affected the results, may order that another Election be conducted or may order any other appropriate relief.
- 33.13 The Justice may as part of his or her decision, order any party to an appeal to pay some or all of the legal expenses incurred by any other party in the appeal.
- 33.14 The decision will be made known to the community of Kahnawà:ke.
- 33.15 The decision is final and is not subject to further appeal.

34. **VACANCIES IN RATITSÉNHAIENHS (COUNCIL)**

- 34.1 The vacancy of a Ratsénhaienhs/Ietsénhaienhs position due to death, resignation or removal from office occurring more than eighteen (18) months before the Election date for Ratsénhaienhs, will be filled by calling for nominations to fill the vacancy.
- 34.2 This should be done two (2) weeks following the vacancy. A by-election should be called two (2) weeks following the nomination, with such modification or adaptation of this Law as the Electoral Officer deems necessary.
- 34.3 The Electoral Officer in this instance will be appointed by re-initiating the mandate of the Electoral Officer from the prior election as soon as a by-election is required. If the former

Electoral Officer is unable to conduct the by-election, the Kahnawà:ke Justice Commission will seek out and appoint an eligible candidate to oversee the by-election.

- 34.4 Should the position of Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs become vacant due to death, resignation or removal from office, six (6) months or more before Election Day, the vacancy must be filled through a by-election.
- 34.5 For greater certainty, if a by-election occurs, a Ratsénhaienhs/Ietsénhaienhs does not have to resign their position should they choose to run for the position of Ohén:ton Í:iente' / Ohén:ton Í:rate' ne Ratitsénhaienhs.

## **PART VI - FINAL**

### **35. REGULATIONS**

- 35.1 The Ratitsénhaienhs (Council) may ratify regulations with respect to any matter outlined in this Law.

### **36. COMING INTO FORCE**

- 36.1 This Law comes into force on the day it is enacted by Resolution of the Mohawk Council of Kahnawà:ke.

### **37. AMENDMENTS**

- 37.1 This Law may be amended in accordance with the procedure set forth in the Community Decision Making Process as amended from time to time.