

Title

# KAHNAWÀ:KE JUSTICE SYSTEM

K.R.L.c., J-1  
[Enacted by MCR # \_\_\_\_ ]

## SECTION I

Preamble

### **PREAMBLE**

We, the Kanien'kehá:ka of Kahnawà:ke (hereinafter "People"), are and have always been Sovereign. We have our land, laws, government, language, culture and spirituality. Our lives are governed by respect for our traditions that are built upon the values and principles of peace, power, fairness, equality, righteousness, harmony, respect and a good mind. It is our responsibility and right to govern our affairs in our own way. It is our inherent right and that of our children and future generations to govern ourselves, with which none may interfere.

In order to maintain peace and harmony in the Territory of Kahnawà:ke (hereinafter "Territory") the Kahnawà:ke Justice System, is hereby established through the Kahnawà:ke Justice Act (hereinafter "Act") and shall conform to the will of the People and applies to all within the jurisdiction of Kahnawà:ke.

It is the will of the People that this Act is paramount to and prevails over any other judicial system if there is any inconsistency between this Act and another, except as specifically provided for by particular Kahnawà:ke legislation.

It is the will of the People that individual and collective rights and responsibilities be kept in balance for the benefit and protection of all as provided for by this Act. In keeping with the principles of balance and harmony, the use of Skén:nen Aonsón:ton (Restorative Justice) shall be the first recourse to resolving conflict. This Act shall ensure the right to seek redress and remedy including appeal before the Court of Kahnawà:ke and any other Court or Tribunal that has been or may be legally constituted and empowered or mandated by the laws of Kahnawà:ke.

Sanctioned by and respecting the will of the People, this law is passed on this \_\_\_\_ (day) of \_\_\_\_ (month), \_\_\_\_ (year) and shall come into effect immediately after its official publication or 30 days from the signature of confirmation that the Community Decision-Making Process (CDMP) was followed.

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**SECTION II - GENERALITIES**

*Jurisdiction for this Act*

**1. JURISDICTION FOR THIS ACT**

1.1 We, the People, have the ultimate and exclusive power, right and jurisdiction, to maintain peace, order and justice. To this end, we hereby institute judicial forums within the Territory as an exercise of our sovereign rights.

*Purpose*

**2. PURPOSE**

2.1 This Act is the will of the People to establish judicial forums to adjudicate and interpret laws applicable to the Territory in order to maintain peace, order and justice.

*Application*

**3. APPLICATION**

3.1 This Act applies to all matters and acts committed on or involving any persons within the Territory.

3.2 It is the will of the People that this Act be exclusively interpreted by the judicial forums, including the Court of Kahnawà:ke and any other court or tribunal that has been legally constituted and empowered or mandated by the laws ratified by the People.

3.3 It is the will of the People that all laws adjudicated and decisions rendered by the judicial forums, including courts, administrative tribunals or other duly authorized entities be enforced by the Kahnawà:ke Peacekeepers, Inspectors, or any other persons and entities empowered or mandated by the laws of Kahnawà:ke.

*Paramountcy*

**4. PARAMOUNTCY**

4.1 This Act is paramount over any other law, act or regulation, issued from an authority outside of Kahnawà:ke and relating to or concerning the adjudication of laws applicable to and on the Territory.

## SECTION II - FORUMS

Skén:nen  
Aonsón:ton

5. **SKÉN:NEN AONSÓN:TON** “To become Peaceful Again”
- 5.1 Skén:nen Aonsón:ton Alternative Dispute Resolution (hereinafter SA/ADR) is a process within the Kahnawà:ke Justice System that is used to resolve conflict in a peaceful, non-adversarial way. The principles embodied in the process are a holistic approach to address conflict. This approach respects concepts historically used by Kanien’kehà:ka to resolve disputes and conflict.
- 5.2 To maintain balance and harmony, SA/ADR (restorative justice, mediation, peace-making circles, etc.) is the entry point for the Kahnawà:ke Justice System except when otherwise provided for in this Act.
- 5.3 All situations of conflict except as otherwise provided for in this Act, are eligible for SA/ADR, provided the parties are in agreement and the issue is determined to be appropriate for a Restorative Justice Forum (SA/ADR).
- 5.4 Exclusion of Legal counsel shall be the general rule, except where determined to be appropriate on a case-by-case basis when referred to Skén:nen Aonsón:ton by the Court of Kahnawà:ke in specific circumstances.
- 5.5 Skén:nen Aonsón:ton and the Court of Kahnawà:ke shall develop protocols on practice and procedures for the transfer of files from one process to another. These practices and procedures shall be made available to the general public. These practices and procedures must ensure the timely transmission of information as well as respecting individual rights and collective rights of the community. Rules for transmitting information or evidence in the restorative justice forums shall be provided for in the protocol between SA/ADR and the Court of Kahnawà:ke or any other forum.

Administrative  
Tribunals

6. **ADMINISTRATIVE TRIBUNALS**
- 6.1 When a petition is filed before the Administrative Tribunal in a private dispute, the matter shall be referred to Skén:nen Aonsón:ton for mandatory review and assessment. Skén:nen Aonsón:ton will make a determination if the matter is appropriate for a restorative justice forum. If agreed upon, the parties will be given the opportunity to resolve the issue in a restorative forum. If a resolution cannot be reached, the matter will be referred back to the Administrative Tribunal for adjudication and decision.

- 6.2 The Administrative Tribunal, in public matters, shall be responsible for reviewing decisions of the administrative or executive branch of government and, where appropriate, provide redress.
- 6.3 The Administrative Tribunal shall review and determine whether due process was followed, whether laws of natural justice were adhered to, ensure absence of bias, ensure the decision was reasonable, determine whether there was absence of jurisdiction, or, if there was a mistake of law. As a general rule, the Administrative Tribunal cannot replace a decision with its own, subject to the power assigned to it by enabling legislation.
- 6.4 There will be one administrative tribunal with a pool of qualified, legally-trained decision-makers. The composition of the administrative tribunal shall consist of one individual having formal legal training. Where enabling legislation requires two additional decision-makers having expertise, the administrative tribunal will consist of three decision-makers. The enabling legislation will identify the expertise required by the decision-makers.
- 6.5 Rules of evidence and procedure of the Administrative Tribunal shall be provided for under this Act as, Regulations Respecting Administrative Tribunals.
- 6.6 No one assigned to the Administrative Tribunal can be removed unless the person ceases to fulfill the required conditions or becomes unable to complete their duties.

7. **COURT OF KAHNAWÀ:KE**

- 7.1 The Court of Kahnawà:ke is the court of original general jurisdiction within the Territory in all civil, criminal and penal matters. It hears in first instance every matter not assigned exclusively to another Kahnawà:ke court or administrative tribunal by Kahnawà:ke Law.
- 7.2 Except for the Kahnawà:ke Court of Appeal, all other Kahnawà:ke courts, administrative tribunals, and private or public bodies established by Kahnawà:ke Law or established by another law but operating within the Territory are subject to the superintending and reforming power of the Court of Kahnawà:ke.
- 7.3 The Court of Kahnawà:ke will have jurisdiction to hear appeals as prescribed by the present Act, or other Kahnawà:ke Law.

7.4 The Court of Kahnawà:ke shall have the authority to decide whether it has jurisdiction on any particular matter, including the exclusive authority to decide whether a law is applicable to the Territory.

8. **COMPOSITION OF THE COURT OF KAHNAWÀ:KE**

8.1 The Court of Kahnawà:ke shall be composed of a body of a minimum of three (3) appointed judges that will be competent to hear all matters within the Court's jurisdiction.

The courts and judges have all the powers necessary for the exercise of their jurisdiction.

They may, at any time and in all matters, whether in first instance or in appeal, issue orders to safeguard the rights of the parties, for such time and on such conditions as they may determine. As well, they may, in the matters brought before them, even on their own initiative, issue injunctions or reprimands, suppress writings or declare them libelous, and make such orders as are appropriate to deal with cases for which no specific remedy is provided by law.

8.2 To be eligible for consideration, a potential judge must meet the criteria as prescribed by regulation.

8.3 When a position becomes available, the Justice Commission makes a call for applications for judges.

8.4 The three selected judges shall select a lead judge amongst themselves. The lead judge will have the same responsibilities as his/her peers plus the administrative functions as attributed to him/her by Regulation.

8.5 The judges of the Court shall hold office for life or until the first of the following events: retirement, resignation, incapacity or removal. Mandatory retirement at age 65 but then a special dispensation by peer judges to continue after age 65.

8.6 Judges may not retire or resign while they are involved in an active file. Other cases shall be assigned to newly appointed judges.

- 8.7 The following shall be considered incompatible functions with the role of judge:
- a) No judge may be currently employed in the Public Service of the Mohawk Council of Kahnawà:ke.
  - b) No judge may act as legal counsel, barrister, notary, police officer or advocate within the Mohawk Territory of Kahnawà:ke.
  - c) No judge may be a current Chief of the Mohawk Council of Kahnawà:ke.
- 8.8 Judges are immune from prosecution under civil, penal and criminal law for acts completed within the scope of their mandate.
- 8.9 For administrative purposes, the Court may appoint such other officers as may be required for the function of the Court (bailiff, court officers).

**9. PRESIDING COURT OF KAHNAWÀ:KE JUDGE(S)**

- 9.1 In criminal matters, one judge will be assigned to hear each case, unless the present Act or another Kahnawà:ke law specifies that three judges shall hear the case.
- 9.2 A judge may refuse an assignment if there is sufficient reason to believe that a conflict of interest, or appearance of conflict of interest exists, or, for any other reason deemed to be in the interest of justice.
- 9.3 If a party to a case considers that there may be a reason why a judge should not hear a case, either party may request that the judge in question be recused. If the request is granted, reassignment of the case will proceed in a manner set forth in the regulations.
- 9.4 When a judge refuses a request for recusal, the decision may be immediately appealed to the lead judge, or in the case of a lead judge, to the next most senior judge for a final decision. If the decision is to grant the request for recusal, reassignment of the case will proceed in a manner set forth in the regulations.

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**10. REMOVAL OF AND OTHER SANCTIONS AGAINST JUDGES AND  
OTHER DECISION-MAKERS**

- 10.1 Judges or other decision-makers may only be removed from office, or otherwise sanctioned for their conduct after a full and impartial investigation conducted by an ad-hoc commission in accordance with the rules set forth in the Regulations.
- 10.2 The decision of the ad-hoc commission resulting from the investigation mentioned in s.10.1 will be published.
- 10.3 The decision of the ad-hoc commission may be appealed to the Kahnawà:ke Court of Appeal within thirty (30) days of the decision.

**SECTION III - COURT OF KAHNAWÀ:KE HEARINGS**

**SESSIONS OF THE COURT OF KAHNAWÀ:KE**

- 11.1 The hearings of the Court shall be conducted on a sessional basis.
- 11.2 All sessions are open to the public unless otherwise closed by a specific provision of law or the judge using his/her discretion.
- 11.3 Video and audio transmissions or recordings; or photographs may only be taken with the approval of the judge.
- 11.4 Sessions shall be conducted in Kanien'kéha or English. In the interest of justice, translation services will be provided by the Court for penal and criminal matters.
- 11.5 In civil matters, the party requesting translation services for any language other than the official language of Kahnawà:ke shall bear the costs of those services.

**12. RULES OF EVIDENCE & PROCEDURE AND ADMINISTRATIVE MATTERS OF THE COURT OF KAHNAWÀ:KE**

- 12.1 The Kahnawà:ke Justice Commission may create, adopt and adapt, by regulation and in accordance with the CDMP ~~Community Decision-Making Process~~ for the adoption of regulations:
- (a) Rules of procedure in Criminal and Penal proceedings;
  - (b) Rules of procedure in Civil proceedings;
  - (c) Rules of procedure in Arbitration in both civil and commercial matters;
  - (d) Rules for the conduct of Alternative Dispute Resolution;
  - (e) Judicial Ethics Manuals or Guidelines;
  - (f) Rules of the Court of Kahnawà:ke and the Appeal Court of Kahnawà:ke;
  - (g) Any other rules, procedures, guidelines or policies for the efficient and effective operating of the Courts of Kahnawà:ke.

**Comment [SD1]:** Change made by drafting committee to ensure consistency, acronym first defined in the Preamble

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**SECTION V - COURT OF KAHNAWÀ:KE JUDGMENTS**

**13. FORM**

- 13.1 All judgments must be in writing.

**14. SPECIAL ORDERS**

- 14.1 Judges have the authority to render any and all sentences that are prescribed by the laws applicable to the case before the Court, ~~including or~~ other remedies.
- 14.2 The judges of the Court of Kahnawà:ke have the power to decide applications for contempt of court.
- 14.3 In conformity with the rules of procedure developed pursuant to Section 12.1 of the present Act, judges have the authority to render any and all interlocutory orders deemed necessary in the interests of justice, including, but not limited to injunction and subpoena orders.

**Comment [SD2]:** From Record of Discussion 2014-02-04 change "or other remedies" to "including other remedies"

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**SECTION VI - APPEALS FROM THE COURT OF KAHNAWÀ:KE IN  
CRIMINAL MATTERS**

*Jurisdiction for  
Appeals in  
Criminal Matters*

**15. JURISDICTION FOR APPEALS IN CRIMINAL MATTERS**

15.1 Appeals in criminal matters from judgments of the Court of Kahnawà:ke rendered pursuant to Canadian Criminal Code shall be heard by the court of competent jurisdiction.

15.2 In criminal ~~Criminal~~ matters, an appeal to the Kahnawà:ke Court of Appeal may lie in accordance with applicable Criminal Law to the Territory.

**Comment [SD3]:** Record of Discussion 2014-02-04 spelling correction accepted

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**SECTION VII - APPEALS FROM THE COURT OF  
KAHNAWÀ:KE IN PENAL MATTERS**

*Jurisdiction for  
Appeals in Penal  
Matters*

**16. JURISDICTION FOR APPEALS IN PENAL MATTERS**

16.1 The Kahnawà:ke Court of Appeal shall have exclusive jurisdiction to hear appeals of judgments emanating from penal matters of the Court of Kahnawà:ke that are rendered pursuant to Kahnawà:ke Law.

16.2 In penal matters, an appeal to the Kahnawà:ke Court of Appeal is only allowed with permission of a judge of the Kahnawà:ke Court of Appeal.

16.3 One appellate judge shall hear appeals from final judgments from the Court of Kahnawà:ke in penal matters as assigned by the lead judge.

**SECTION VIII - KAHNAWÀ:KE COURT OF APPEAL**

*Composition of the  
Kahnawà:ke Court  
of Appeal*

**17. COMPOSITION OF THE KAHNAWÀ:KE COURT OF APPEAL**

17.1 The Kahnawà:ke Court of Appeal shall be composed of a pool of judges that will be competent to hear all matters within the Court's jurisdiction. This pool of judges may include judges from the Court of Kahnawà:ke or accredited judges from other communities with whom Kahnawà:ke has a reciprocal agreement on qualifications.

**18. JURISDICTION FOR APPEALS IN CIVIL MATTERS**

- 18.1 Appeals from Court of Kahnawà:ke final judgments shall be heard by the Kahnawà:ke Court of Appeal.
- 18.2 An automatic appeal lies to the Kahnawà:ke Court of Appeal in the following instances:
- a) from any final judgment of the Court of Kahnawà:ke, except in a case where the value of the object of the dispute in appeal is less than the amount fixed by regulation;
  - b) from any final judgment or order taken regarding Membership;
  - c) from any final judgment rendered in matters of contempt of court;
  - d) from any final judgment rendered in matters concerning confinement in an institution or psychiatric assessment;
  - e) from any final judgment in the following matters: tutorship of minors or absentees, declaratory judgments of death, tutorship councils, protective supervision and the homologation of mandates given by a person in anticipation of their incapacity;
  - f) from any final judgment of the Court of Kahnawà:ke regarding land.
- 18.3 Any other final judgment of the Court of Kahnawà:ke may be appealed with permission of a judge of the Kahnawà:ke Court of Appeal, in accordance with rules set forth in Regulation # \_\_ on Appeals (Title);
- 18.4 One appellate judge shall hear appeals from final interlocutory judgments from the Court of Kahnawà:ke as assigned by the lead judge.

**19. KAHNAWÀ:KE COURT OF APPEAL HEARINGS**

- 19.1 Appeals shall be heard by one judge, except where the present Act or other Kahnawà:ke law specifically provides that another number of judges shall hear an appeal.
- 19.2 Where permission to appeal is required, the appellant will file his motion for permission before the Court of Appeal within Ten (10) days of receipt of the judgment which he seeks to appeal.
- 19.3 The motion will be served on the other party or parties and will contain the information provided for in the Rules of Practice for the Court of Appeal.

- 19.4 Where permission to appeal is not required, the appellant will file his notice of appeal before the Court of Appeal within thirty (30) days of receipt of the judgment which he seeks to appeal.
- 19.5 The notice of appeal will be served on the other party or parties and will contain the information provided for in the Rules of Practice for the Court of Appeal.
- 19.6 The parties will follow the procedure for appeals set forth in the Rules of Civil Procedure and in the Rules of Practice for the Court of Appeal.

**20. DECISIONS OF THE KAHNAWÀ:KE COURT OF APPEAL**

- 20.1 All decisions must be delivered in writing.
- 20.2 If a law provides that a decision be heard by a panel of judges, the decision rendered must be by the majority. A dissenting judge must submit ~~his/her~~ reasons ~~for his/her dissent~~ in writing. There can be no abstentions.
- 20.3 Unless a Kahnawà:ke Law specifies otherwise, all decisions of the Kahnawà:ke Court of Appeal are final.

**Comment [SD4]:** Record of Discussion 2014-02-04

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**SECTION IX - OTHER**

**21. OPERATIONAL BUDGET FOR THE COURT OF KAHNAWÀ:KE**

- 21.1 The remuneration of Judges, Adjudicators and technical resource people shall be fixed by Mohawk Council Executive Directive (MCED).
- The Court Administration shall incorporate this expense into its annual budget, as well as any additional expense, to make functional other forums to address requirements identified within a Kahnawà:ke Law for the administration of Justice.
- 21.2 Remuneration for operational personnel shall be in accordance with the Mohawk Council of Kahnawà:ke Personnel Policy Salary grid.

Ratsénhaienhs/  
Ietsénhaienhs  
Responsible for  
Law

**22. RATSÉNHAIIENHS/IETSÉNHAIIENHS RESPONSIBLE FOR LAW**

22.1 The Justice Portfolio Ratsénhaienhs/Ietsénhaienhs are responsible to ensure that legislative review of the current law is completed as prescribed by the ~~CDMP~~ ~~Community Decision Making Process (CDMP)~~.

**Comment [SD5]:** Change made by drafting committee to ensure consistency, acronym first defined in the Preamble

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22.2 The Justice Portfolio Ratsénhaienhs/Ietsénhaienhs ~~Chief~~ shall also be responsible to advocate and support this Act with other governments to develop, maintain and protect Kahnawà:ke’s jurisdiction.

**Comment [SD6]:** Record of Discussion 2014-02-04, remove word “chief”

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Amendments

**23. AMENDMENTS**

23.1 Sections of this ~~This~~ Law shall ~~may~~ only be amended or repealed by the Kanien'kehá:ka of Kahnawà:ke using the ~~CDMP~~. Any amendments to sections of this Law shall not affect the hearing of cases before the Court at the time of the amendment or repeal.

**Comment [SD7]:** Record of Discussion 2014-02-04 see Definition of “CDMP”

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Coming into Force

**24. COMING INTO FORCE**

24.1 Further to the will of the Kanien'kehá:ka of Kahnawà:ke, as expressed through the CDMP this Law is enacted on \_\_\_\_\_ by Mohawk Council Resolution (MCR) No:\_\_\_/2014-2015. The provisions of this Law come into force on the dates set out in MCR No:\_\_\_/2014-2015 or on such later dates as are set out in subsequent resolutions of the Kahnawà:kehrón Ratitsénhaienhs.

History

**25. HISTORY**

Enacted by MCR # \_\_\_\_\_

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Transitional Measures

**26. TRANSITIONAL MEASURES**

All laws of general application which are ~~not~~ inconsistent with the present Law continue to be in force within the Territory until such time as such laws are repealed, amended or ~~adopted~~ ~~adapted~~.

**Comment [SD8]:** Record of Discussion 2014-02-04 to incorporate community’s consensus of removing the double negative. Change typo from adapted to adopted

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Gender

**27. GENDER**

Any reference to he/him/Ratsénhaienhs is meant to include she/her/Ietsénhaienhs.

Definitions

28. **DEFINITIONS**

Abstention

**Abstention** - to withhold one's vote.

Adjudication

**Adjudication** - the act of a court or administrative tribunal in making an order or decree.

Adjudicator

**Adjudicator** - one who sits in judgment or who pronounces by judicial sentence in the administrative tribunal.

Administrative Tribunal

**Administrative tribunal** - an adjudicator or panel of adjudicators, charged with reviewing decisions of the administrative branch of government and where appropriate to correct an error or fault.

Appeal

**Appeal** - an application or proceeding for review by a higher court.

Appellate

**Appellate** - pertaining to appeals.

Bias

**Bias** - influence in an unfair way, having preference for or against.

Civil matters

**Civil matters** - pertains to legal proceedings involving private individuals, corporate entities or government, which have as their purpose the ordering of compensation for damage to one's property or person; the mandatory execution of an obligation.

Community Decision-Making Process (CDMP)

**Community Decision-Making Process (CDMP)** - Process by which the community reaches consensus on community laws as indicated by MCED # 14/2005-2006 signed on May 30, 2005 as amended from time to time, or any process which may replace it.

Contempt of Court

**Contempt of court** - willful disobedience to or open disrespect for the rules or orders of a court or legislative body.

Court

**Court** - a place where justice is administered, a court duly constituted for the hearing and determination of cases.

Court of Appeal

**Court of appeal** - a court whose jurisdiction is to review decisions of a lower court or agencies.

Court of Competent Jurisdiction

**Court of competent jurisdiction** - The Court which is designated by Kahnawà:ke law to adjudicate a particular matter (based on territory, person or subject matter) to the exclusion of any other Court.

*Criminal matters*

**Criminal matters** - pertains to legal proceedings involving private individuals, or corporate entities and the government, which have as their purpose the **punishing** of criminal wrongdoing.

**Comment [SD9]:** Record of Discussion 2014-02-18 to address the change requested “punishing” to “rectify”, contained in the the definition of Sken:nen A’onsonton was Kahnawake Justice System which was undefined, the drafting committee then defined “Kahnawà:ke Justice System” to convey that primary purpose is to maintain order and balance in all jurisdictions

*Decision-maker*

**Decision-maker** - members of administrative tribunals and persons other than judges exercising judicial or quasi-judicial powers.

*Dissenting opinion*

**Dissenting opinion** - the minority opinion that differs from the majority opinion.

*Formal Legal Training*

**Formal legal training** - means having completed an undergraduate degree in law at a recognized North~~ern~~ American university.

*Forum(s)*

**Forum(s)** - 1) a place where legal remedies can be sought, for instance a court. 2) a place where people can bring a complaint or grievance in order to obtain a legal remedy.

*Ietsénhaienhs*

**Ietsénhaienhs** - an elected female Chief **chief** of the Mohawk Council of Kahnawà:ke.

**Comment [SD10]:** 2014-02-18 capitalize “c” in Chief

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*Injunction*

**Injunction** - an instruction or order issued by a court to a party to an action especially to refrain from some act, such as causing a nuisance.

*Interest of Justice*

**Interest of justice** - means pursuing a course of action or conduct that is fair and equitable.

*Interlocutory*

**Interlocutory** - an order put in place during the course of an action as opposed to a final decision.

*Interpret*

**Interpret** - means the judicial pronouncement on the purpose, scope or intent of a legislative text.

*Judge*

**Judge** - a public official with the authority to hear cases in a court of law and pronounce judgment (includes appellate judges).

*Judgment*

**Judgment** - a judicial decision given by a judge or court that has a mandatory effect.

*Jurisdiction*

**Jurisdiction** - the right, power, or authority to administer justice.

*Kahnawa’kehró:non*

**Kahnawa’kehró:non** - persons legally-residing in the territory of Kahnawà:ke.

Kahnawà:ke Justice Commission

**Kahnawà:ke Justice Commission** - an appointed body whose mandate is to integrate traditional Kanien'kehá:ka ~~Mohawk~~ principles into the Kahnawà:ke Justice System; assure fair and just resolution of conflict through the creation or modification of justice services; plan and implement prevention of conflict, violence and crime by developing relevant programs and to educate the public on justice initiatives and administer and order the justice system of Kahnawà:ke.

**Comment [SD11]:** Record of Discussion 2014-02-18 Change "Mohawk" to "Kanien'keha:ka"

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Kahnawà:ke Justice System

**Kahnawà:ke Justice System** - includes administrative, criminal, civil and penal jurisdictions having as its purpose to redress, remedy and re-establish harmony.

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Kanien'kehá:ka (the People of the Flint)

**Kanien'kehá:ka (the People of the Flint) of Kahnawà:ke** - commonly referred to as the Mohawk People of Kahnawà:ke as defined by the Kahnawà:ke Membership Law K.R.L. c. M-1 in the definition of "Kahnawà:ke Kanien'kehá:ka Registry".

Lead judge

**Lead judge** - is an individual selected by the other judges (8.4) who shall be permanently assigned to the Kahnawà:ke Court of Appeal.

Mediation

**Mediation** - action in mediating between parties, as to effect an agreement or reconciliation.

Natural Justice

**Natural justice** - the assurance that the principles and procedures of fair and unbiased decision-making are followed and made in good faith.

Penal matters

**Penal matters** - pertaining to or involving punishment for crimes and offenses.

Private Dispute

**Private dispute** - between two (2) or more private individuals i.e. labor dispute, employer/ employee.

Public Matter

**Public matter** - between two (2) or more private individuals and the government or a government entity, for public order issues and private individuals (issuance of a permit: ABC, Landfill, etc.).

Ratitsénhaiens

**Ratitsénhaiens** - councilors or more than one elected chief of the Mohawk Council of Kahnawà:ke.

Ratsénhaienhs

**Ratsénhaienhs** - an elected male Chief ~~chief~~ of the Mohawk Council of Kahnawà:ke.

**Comment [SD12]:** 2014-02-18 capitalize "c" in Chief

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Redress

**Redress** - to provide a method or procedure to correct a perceived faulty administrative or judicial judgment.

Skén:nen  
Aonsón:ton

**Skén:nen Aonsón:ton** - “To become Peaceful Again”, is the process within the Kahnawà:ke Justice System that is used to resolve and rectify criminal and civil conflict in a peaceful, non-adversarial way.

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Subpoena

**Subpoena** - the usual writ for the summoning of witnesses or the submission of evidence, as records or documents, before a court or other deliberative body.

Superintending &  
Reforming Powers

**Superintending and reforming powers** - are the Court of Kahnawà:ke’s discretionary powers to judicially review and control the decisions and actions of lower Courts, tribunals, public and private bodies operating in the Territory.

Technical Resource  
Person

**Technical resource person** - An individual with specific expertise on the subject matter before the court or tribunal.

Territory

**Territory** - means the original lands of the **Kanien’kehá:ka Mohawk** people of Kahnawà:ke from time immemorial and now includes Indian Reserve No. 14; Tiowérotón - Doncaster; and the original lands designated as the Seigneurie of Sault Saint Louis; and includes:

Comment [SD13]: Record of Discussion 2014-02-18 Change “Mohawk” to “Kanien’keha:ka”

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- a) the lands now held under the mandate of the **Kanien’kehá:ka Mohawk People** of Kahnawà:ke;
- b) any and all lands that may be added to the lands now held by the **Kanien’kehá:ka Mohawk People** of Kahnawà:ke through the negotiation and resolution of land grievances, and
- c) any and all lands that may be added to the lands now held under the mandate of the **Kanien’kehá:ka Mohawk People** of Kahnawà:ke as the result of any other means.

Comment [SD14]: Record of Discussion 2014-02-18 Change “Mohawk” to “Kanien’keha:ka”

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Comment [SD15]: Record of Discussion 2014-02-18 Change “Mohawk” to “Kanien’keha:ka”

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Comment [SD16]: Record of Discussion 2014-02-18 Change “Mohawk” to “Kanien’keha:ka”

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Tribunal

**Tribunal** - depending on the context this term could refer to an administrative decision-making body or a court of justice.



## REGULATION 1: ELIGIBILITY CRITERIA FOR JUDGES

- Formal Legal Training (see Definitions Section 28);
- Member of a recognized Bar Association in North America;
- Have the requisite knowledge of law applicable to the Territory;
- Minimum of five (5) years of experience as a practicing attorney;
- Preference will be given to individuals of Onkwehonwe descent;
- Have knowledge of Kanien'kehaka culture and customs and/or be willing to acquire training to gain that knowledge;
- Onkwehonwe means "Original people of North America".

**Comment [SD17]:** Record of Discussion 2014-02-18 added by community. See Definition of Onkwehonwe "Original people of North America"

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**Comment [SD18]:** Record of Discussion 2014-02-18 added by community

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## REGULATION 2: SELECTION PROCESS FOR JUDGES

- a) All applications will be screened by the Kahnawà:ke Justice Commission to ensure that they meet the necessary requirements. The names and backgrounds of eligible candidates will be published and brought forth to the community for public review for a 30 day period. Within 60 days of publication, the Justice Commission ~~Community Decision Making Process (CDMP)~~ will hold a special community meeting to confirm selection of the ~~be used to choose~~ judges by consensus. Candidates must be present to answer questions.
- b) Upon ~~confirmation~~ ~~selection~~ by the community, the Justice Portfolio Ratsénhaienhs will swear in the selected judges (by public pledge to the community) within 10 days at a public ceremony (to be recorded and broadcast via a community television channel; and/or the MCK website; and/or ~~CDMP, Community Decision Making Process~~ website; and/or other media determined as suitable for this purpose). Each judge must, before taking up duties, make a solemn oath, that the powers conferred will be exercised impartially, independently, conscientiously, and judicially.

**Comment [SD19]:** Record of Discussion 2014-02-18

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**Comment [SD20]:** Record of Discussion 2014-02-18

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**Comment [SD21]:** Change made by drafting committee to ensure consistency, acronym first defined in the Preamble

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