

Title

KAHNAWÀ:KE JUSTICE SYSTEM

K.R.L.
[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 ~~no one~~ interfere.

Comment [SD1]: Record of Discussion 2012-11-19, Page 9. No definition will be inserted because this is what the people believe it to be and if a definition is inserted it can limit its powers.

In order to maintain peace and harmony in the Mohawk Traditional 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.

Comment [SD2]: Record of Discussion 2012-11-19, Page 9 replaces "no one". Suggestion to include word "foreign" however, "none may" is more general than foreign and drafting committee believes it to be less restrictive than using the term foreign which is consistent with the purpose of the preamble

Comment [SD3]: Record of Discussion 2012-11-19, Page 9

Comment [SD4]: Record of Discussion 2012-11-19, Page 9, needs to be further defined.

~~This Act may be interpreted so as to allow for the creation of any forum needed to address existing and future laws;~~

Comment [SD5]: Record of Discussion 2012-11-19. Explanation of forum can be found in 4th paragraph.

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

Comment [SD6]: Record of Discussion 2012-11-19, must be kept in the document because of the ratification process at the end.

Comment [SD7]: Record of Discussion 2012-11-19, Page 9. Legislation is generic term acts and laws.

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.

Comment [SD8]: To take into consideration future development of courts, tribunals, etc.

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 was followed.

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~~ ~~institute~~ institute 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.**

Comment [SD9]: Record of discussion 2012-11-25, page 10, combine 5.5 & 5.6

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, is responsible to review decisions of the administrative and/or executive branch of government and where it is determined to be appropriate, provide redress. 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.~~

Comment [SD10]: Record of Discussion 2012-11-09, suggestion to conduct appeals is generally not a function of an administrative tribunal unless provided for in the enabling law. Changes in wording were accepted as per provided by feed-back from community member.

6.3 The Administrative Tribunal shall ~~will~~ 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 ~~at~~ 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.

Comment [SD11]: Drafting committee agreed to grammatical suggestions from community member

6.4 There will be one administrative tribunal with a pool of qualified, legally-trained ~~decision-makers and technical advisers.~~ The composition of the ~~administrative tribunal hearing panel~~ shall consist of one individual having formal legal training, ~~selected from a resource pool. The two other members shall have the expertise as defined in the~~ Where enabling legislation requires two additional ~~decision-makers~~ having expertise, the administrative tribunal will consist of three decision-makers. The enabling legislation ~~Applicable regulations~~ will identify the expertise required by the ~~decision-makers~~ ~~competencies of the individuals who will participate in the tribunal.~~ ~~Under exceptional circumstances there may only be a need for one adjudicator.~~

Comment [SD12]: The administrative tribunal will be composed of one decision-maker rather than a panel of three and this is based on capacity and expediency.

Comment [SD13]: For consistency, terminology such as "members", "adjudicators", etc. was removed and replaced by "decision-makers"

Comment [SD14]: Record of Discussion 2012-11-09

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~~ ~~he/she~~ ceases to fulfill the required conditions or becomes ~~permanently~~ unable to complete their ~~his/her~~ duties. ~~or is deemed unfit.~~ ~~Any interested person may make an application for removal with the Justice Commission.~~

Comment [SD15]: Suggestion by community member to substitute "he/she" with "person"

Comment [SD16]: Record of Discussion 2012-11-09 addressed in 10.1

Comment [SD17]: Procedures to remove a decision-maker are addressed in 10.1

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.

Comment [SD18]: Record of Discussion 2012-10-09: As per original consultation with community and follow-up, serious criminal offenses i.e. murder, at this time, will not be heard within the Court of Kahnawà:ke. It is not to say that at a future date, with human and financial resource capacity this may be reviewed again.

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.

Comment [SD19]: Note from comments of Record of Discussion 2012-10-09, the definition of “criminal” may be required to be expanded upon or re-defined to identify summary conviction offenses under Part 27 of the Criminal Code.

7.3 The Court of Kahnawà:ke will have jurisdiction to hear appeals as prescribed by the present Act, or other Kahnawà:ke Law.

Comment [SD20]: Record of Discussion 2012-10-09, definition added.

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.

Comment [SD21]: Record of Discussion 2012-10-09 the issue of reciprocity was raised here, how are we going to address it? If we use the terminology, it must be put in the definitions.

Comment [SD22]: Record of Discussion 2012-10-09 Does this relate specifically to Kahnawake Law and if so, it must be identified; if it’s in relation to the homologation of an outside order, this also must be identified and must be identified along with parameters and current protections under the Indian Act for seizure.

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. ~~as approved by the Community Decision Making Process (CDMP) or other community decision making process.~~

Comment [SD23]: Record of Discussion 2012-10-30, criteria for selection as a judge is identified in regulation 1: Eligibility Criteria for Judges

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

Comment [SD24]: As contained in 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 Community Decision Making Process (CDMP) will be used to choose judges (candidates must be present to answer questions).~~

b) ~~Upon selection by the community, the Justice Portfolio Ratsénhaiehs 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 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 [SD25]: Record of Discussion 2012-10-30 Moved to regulation 2.

8.4 The three selected judges shall select a lead judge amongst themselves. The lead judge will have 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.*

Comment [SD26]: Record of Discussion 2012-10-30 Mandatory age of retirement: special dispensation must be approved by peer judges as well as the Justice Commission.

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 presiding judge may be a current Chief of the Mohawk Council of Kahnawà:ke.~~

Comment [SD27]: Record of Discussion 2012-10-30 Remove word "presiding" for consistency.

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).

Comment [SD28]: Record of Discussions 2012-10-30

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.

Comment [SD29]: Record of Discussion 2012-10-30

9.2 ~~The Court Clerk shall assign court dates to the judge.~~ A judge may refuse an assignment if there is sufficient reason to believe that a conflict, or appearance of conflict of interest exists, or, for any other reason deemed to be in the interest of justice.

Comment [SD30]: Deleted because it is procedural (Article 12).

9.3 If a party to a case considers that there may be a reason why a judge should not hear a ~~their~~ case, ~~either party~~ ~~they~~ may request that the judge in question be ~~recused~~ ~~removed~~. If the request is granted, reassignment of the case will proceed in a manner set forth in the regulations. ~~When a judge is recused, Should there be removal of a judge, the lead judge (if the request concerns the lead judge, the Justice Commission) shall select a replacement to hear the case. Should a conflict still exist, a replacement judge is appointed by a judge from the Kahnawà:ke Court of Appeal.~~

Comment [SD31]: Suggestion from community member regarding grammatical structure

Comment [SD32]: "Removed" is not the correct term, "recused" is the appropriate terminology in this section

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.~~

Comment [SD33]: Inserted from suggestion from community member

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

10.1 Judges or other ~~decision-makers~~ may only be removed ~~No judge or other decision maker may be removed~~ from office, or otherwise sanctioned for their conduct after a full and impartial investigation conducted by an ~~ad-hoc commission~~ ~~the Justice Commission~~ in accordance with the rules set forth in the Regulations.

Comment [SD34]: Record of Discussion 2012-11-09 to address "unfit" Reflection of 6.6

Comment [SD35]: To address concern of transparency and the authority of the Justice Commission

10.2 The decision of the ~~ad-hoc commission~~ ~~Justice Commission~~ resulting from the investigation mentioned in s.10.1 will be published.

10.3 The decision of the ~~ad-hoc commission~~ ~~Justice Commission~~ may be appealed ~~to the Kahnawà:ke Court of Appeal~~ within thirty (30) days of the decision. ~~to the Kahnawà:ke Court of Appeal.~~

SECTION III - COURT OF KAHNAWÀ:KE HEARINGS

Sessions of the
Court of
Kahnawà:ke

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.

Comment [SD36]: Suggestion from community member

Comment [SD37]: Suggestion from community member

Comment [SD38]: Record of Discussion 2012-10-30

Rules of Evidence
& Procedure &
Administrative
Matters of the
Court of
Kahnawà:ke

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 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 or Kahnawà:ke.

Comment [SD39]: New section prepared

- ~~12.1 The Kahnawà:ke Justice Commission may identify the need for and to adopt, adapt and amend such rules of procedure as have been identified as necessary for the conduct of the court. The Kahnawà:ke Justice Commission may create, adopt or adapt by regulation, the rules of procedure that apply for criminal and penal matters; and for civil matters of the Court. These rules of procedure can include but are not limited to rules on:~~

Comment [SD40]: Record of Discussion 2012-10-30 The change here is to ensure flexibility in procedures or rules that support the essential spirit of the law. We are foreseeing the need to adapt rapidly. Without this flexibility, it will be difficult and time-consuming to accomplish the community's goals.

Comment [SD41]: Grouped the common areas: civil, criminal, administrative tribunals, restorative justice and judicial ethics into 1 section.

- ~~a) —admissibility and introduction of evidence;~~
- ~~b) —giving notice;~~
- ~~c) —summoning and compelling witnesses attendance and testimony;~~
- ~~d) —the production and service of documents;~~
- ~~e) —all forms of discovery;~~
- ~~f) —the option of being judged by judge or jury for indictable offenses;~~
- ~~g) —contempt of court;~~
- ~~h) —the powers and functions of the court clerk and judge in chambers;~~
- ~~i) —taking and preserving evidence;~~
- ~~j) —pre hearing conferences;~~
- ~~k) —imposition of time limits and delays;~~
- ~~l) —the making of tariffs and costs or civil, penal and criminal matters~~
- ~~m) —frivolous and vexatious actions and procedures;~~
- ~~n) —right to be heard;~~
- ~~o) —cross examination of witnesses;~~
- ~~p) —confidentiality and closed hearings;~~
- ~~q) —non juridical days;~~
- ~~r) —any other rule of evidence or procedure;~~
- ~~s) —seizures;~~
- ~~t) —recognition and accreditation of legal representation in criminal, penal and civil matters;~~
- ~~u) —judicial ethics;~~
- ~~v) —procedure for making complaints against judges and other decision-makers.~~

Comment [SD42]: Record of Discussion 2012-10-30 Consensus was to remove as we will not be hearing indictable offenses.

SECTION V - COURT OF KAHNAWÀ:KE JUDGMENTS DECISIONS

Form

13. FORM

13.1 All ~~judgments~~ ~~decisions~~ must be in writing.

Comment [SD43]: Record of Discussion 2012-11-08 to ensure consistency of wording “judgments”.

~~13.2 Judgments Decisions made taken by a panel of three judges must be by the majority of judges. There can be no abstentions and judgments must be written by, or in the name of the majority. A dissenting judge must submit a written dissent. and, as the case may be, the dissenting judge.~~

Comment [SD44]: Moved to appeal section. This section has been deleted because the court of Kahnawà:ke hears cases with only one judge.

Special orders

14. SPECIAL ORDERS SENTENCING AND INTERLOCUTORY ORDERS

Comment [SD45]: Record of Discussion 2012-11-08 suggestion to change word “sentencing”. Change to “Special orders”. This section must be properly situated in the document (possibly Art. 9)

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, 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.

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

**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~~ APPEALS IN CIVIL
MATTERS**

Comment [SD46]: Heading changed to encompass all appeals.

*Composition of the
Kahnawà:ke Court
of Appeal*

17. COMPOSITION OF THE KAHNAWÀ:KE COURT OF APPEAL

Comment [SD47]: Record of Discussion 2012-11-08 suggestion to reverse order from 18. To 17.

- 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, ~~of other Mohawk communities.~~

Comment [SD48]: Record of Discussion 2012-11-08 to address the comment not to limit ourselves due to capacity.

*Jurisdiction for
Appeals in Civil
Matters*

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~~ \$ 50,000;
 - b) from any ~~final~~ judgment or order taken regarding ~~Membership~~;
 - c) from any final judgment rendered in matters of contempt of court;

Comment [SD49]: Record of Discussion 2012-11-08. For example, the amount in Quebec is currently \$ 50,000 but Kahnawake can set its own limit by regulation.

Comment [SD50]: Record of Discussion 2012-11-08

Comment [SD51]: May affect status, human rights to ensure expediency appeal is automatic.

- 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);**

Comment [SD52]: Record of Discussion 2012-11-08 Regulations for Appeals need to be developed. Or adopted.

18.4 One appellate judge shall hear appeals from final interlocutory judgments from the Court of Kahnawà:ke as assigned by the lead judge.

Kahnawà:ke Court of Appeal Hearings

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. ~~There can be no abstentions and judgments must be written by, or in the name of, the majority and, as the case may be, the dissenting judge.~~ A dissenting judge must submit his/her reasons his his/her dissent in writing.

Comment [SD53]: Record of Discussion 2012-11-08 Changed as per consensus of the group

20.3 Unless a Kahnawà:ke Law specifies otherwise, all decisions of the Kahnawà:ke Court of Appeal are final, ~~and without appeal.~~

Comment [SD54]: As per record of discussion of November 8, 2012 the sentence will end at "are final" and to remove "and without appeal".

Formatted: Font: 12 pt, Highlight

SECTION IX - OTHER

21. **OPERATIONAL BUDGET FOR THE COURT OF KAHNAWAKE
REMUNERATION AND BUDGET FOR JUDGES OF THE COURT OF
KAHNAWÀ:KE**

Comment [RS55]: As per community member comment modification to title to include all expenses for court operations.

21.1 The remuneration of Judges, Adjudicators and technical resource people shall be fixed by Mohawk Council Executive Directive (MCED).

Comment [RS56]: As per community member comment definition of "Technical Resource people" will be added to definitions.

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.

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

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

22.2 The Justice Portfolio Chief shall also be responsible to advocate and support this Act with other governments to develop, maintain and protect Kahnawake's jurisdiction.

Amendments

23. **AMENDMENTS**

23.1 ~~This Law may only be amended, repealed or revoked in accordance with the established procedure under the Community Decision Making Process. This Law may not be amended to affect the hearing of cases being heard at the time of the amendment.~~ This Law may only be amended by the Kanien'kehaka of Kahnawake using the CDMP. Any amendments to this Law shall not affect the hearing of cases before the Court at the time of the amendment.

Comment [RS57]: Hearing of November 8, 2012 and input from community member suggested changes have been incorporated to strengthen the wording of the clause.

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 Kahnawa'kehró:non Ratitsénhaienhs.

Comment [RS58]: To ensure compliance with CDMP process.

Comment [RS59]: Change both references to MCR as per November 8, 2012 hearing.

History

25. **HISTORY**

Being created.

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 adapted.

Comment [RS60]: AS per community member comment revision incorporated.

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
 |
 Administrative Tribunal
 |
 Admissibility
 |
 Appeal
 |
 Appellate
 |
 Bias
 |
 Civil matters
 |
 Community Decision-Making Process (CDMP)
 |
 Contempt of Court
 |
 Court
 |
 Court of Appeal
 |
 Court of Competent Jurisdiction
 |
 Criminal
 |
 Decision-maker

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

Formatted: Indent: Left: 0"

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.

~~Admissibility - that which can be accepted or allowable.~~

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

Appellate - pertaining to appeals.

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

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

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

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

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

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

Comment [SD61]: From comments of Record of Discussion 2012-10-09, the definition of "criminal" may be required to be expanded upon or re-defined to identify summary conviction offenses under Part 27 of the Criminal Code. Changed to criminal matters with definition.

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

Discovery

~~Discovery—compulsory disclosure of facts or documents~~

Dissenting

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 Northern 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.

Comment [SD62]: Record of Discussion 2012-11-19, Page 9. Definition to be inserted

Frivolous

~~Frivolous—of little or no weight, worth or importance.~~

Ietsénhaienhs

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

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.

Interested Person

~~Interested person—means a person who has an interest or stake in the outcome of an issue or who has standing in a Court proceeding.~~

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 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.

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.

~~Legally trained judge~~

~~**Legally trained judge**— completed undergraduate degree in law at a recognized North American university and is a member in good standing of a North American Bar Association (find a place).~~

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

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

Private Dispute

Private dispute - between two (2) or more private individuals i.e. labour 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 or Kahnawà:ke

Ratsénhaienhs

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

Redress

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

Skén:nen
Aonsón:ton

Subpoena

Superintending &
Reforming Powers

Technical Resource
Person

Territory

Tribunal

Vexatious

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

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 and reforming powers - are the Court of Kahnawake’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 - An individual with specific expertise on the subject matter before the court or tribunal.

Comment [RS63]: Definition added.

Formatted: Font: 12 pt

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

- a) the lands now held under the mandate of the Mohawk People of Kahnawà:ke;
- b) any and all lands that may be added to the lands now held by the 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 Mohawk People of Kahnawà:ke as the result of any other means.

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

~~**Vexatious**—instituted without sufficient grounds and serving only to cause annoyance.~~

REGULATION 1: ELIGIBILITY CRITERIA FOR JUDGES

Comment [SD64]: Record of Discussion 2012-10-30

- 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;
- Should **Aboriginal descent** be in the eligibility criteria?

Comment [SD65]: Consensus was not reached for the requirement to have aboriginal descent as part of the eligibility criteria. This must be addressed in the second consultation phase.

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 Community Decision-Making Process (CDMP) will be used to choose judges (candidates must be present to answer questions).
- b) Upon 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 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 [SD66]: Record of Discussion 2012-10-30 Separate section identifying process for the Justice Commission to recommend judges appointments but there is still an approval process by the community.