

**Schedule “A”**  
To a Memorandum of Understanding  
Between the Mohawk Council of Kahnawà:ke  
And the Kahnawà:ke Tobacco Working Group

## **KAHNAWÀ:KE TOBACCO LAW**

**RESPECTFULLY SUBMITTED**  
to the  
Kahnawà:ke Legislative Coordinating Commission  
this 17<sup>th</sup> day of Ohiari:ha/June, 2014

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## SECTION I

### 1. JURISDICTION

- 1.1 We are the Kanien'kehá:ka of Kahnawà:ke. We are a community of Indigenous Peoples within the Kanien'kehá:ka Nation and the Rotinohsonnión:we.
- 1.2 Our relationship with other peoples and other governments is, and will always be, defined by the Teioháte Kaswenta – the Two Row Wampum Treaty.
- 1.3 As Indigenous Peoples, the Kanien'kehá:ka of Kahnawà:ke possess an inalienable right to self-determination.
- 1.4 Our right to self-determination has been recognized and affirmed in the Constitution of Canada and in numerous international declarations, covenants and conventions, including: United Nations Declaration on the Rights of Indigenous Peoples; United Nations Human Rights Council Resolution 2006/2; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Vienna Declaration, World Conference on Human Rights; and Convention on the Prevention and Punishment of the Crime of Genocide.
- 1.5 Our right to self-determination includes the right to maintain and promote our Kanien'kehá:ka identity including our culture, traditions, language, customs and laws.
- 1.6 Our right to self-determination also includes the right to achieve self-sufficiency through the responsible development and regulation of economic activities within the Mohawk Territory of Kahnawà:ke.
- 1.7 The cultivation, manufacture, use and trade of tobacco have always played an integral role in our culture, traditions and customs.
- 1.8 This Law is a specific manifestation of our right of self-determination and is grounded on our own unalienable jurisdiction.

**Comment [TDT1]:** 11/13/2015 Comment #40: "Does the Confederacy agree with this?" Suggested wording: "We, the Kanien'keha:ka of Kahnawà:ke are a community of Indigenous peoples ..."  
Response: We are stating who we are, the question needs to be addressed to the Confederacy.

## SECTION II

### 2. PARAMOUNTCY

- 2.1 This Law is paramount to any other legislative act or regulation, including any act or regulation of the Parliament of Canada, the legislative assembly of any province of Canada and of any other governmental authority, touching or concerning any matter enumerated in this Law.
- 2.2 For greater certainty, commencing the date on which this Law comes into effect, certificates or other forms of authorization issued by the Commission will

**Comment [TDT WG2]:** 4/7/2015 comment #41 concerning how non-natives who hold outside permits will be affected.

**Comment [TDT3]:** 11/13/2015 Comment #41. Suggested wording to read: "... issued by the Kahnawà:ke Tobacco Regulatory Commission..."

supersede any ~~license~~ permit, certificate or other authorization in relation to the tobacco industry previously issued by a governmental agency or authority other than the Commission.

### SECTION III

#### 3. INTENT AND PURPOSE

3.1 This Law is intended to assert the unalienable rights of the Kanien'kehá:ka of Kahnawà:ke to achieve peace, security, prosperity and self-sufficiency through sustainable economic activity and is urgently needed to counter an imminent threat by external governments to challenge these collective rights.

3.2 The purposes of this Law are:

- (a) to establish a lawful context within which all aspects of the Kahnawà:ke tobacco trade will be conducted safely, securely and in the best interests of the Kanien'kehá:ka of Kahnawà:ke;
- (b) to preserve and protect the long term commercial viability of the Kahnawà:ke tobacco trade; and,
- (c) to ensure the Kahnawà:ke tobacco trade continues to provide a sustainable economic base and a source of revenue to the Kanien'kehá:ka of Kahnawà:ke.

### SECTION IV

#### 4. SCOPE

4.1 This Law applies to:

- (a) the Kahnawà:ke tobacco industry, as defined in this Law;
- (b) all activities related to the Kahnawà:ke tobacco industry; and
- (c) all persons and business entities situated or found within the Mohawk Territory of Kahnawà:ke.

4.2 In particular, this Law applies to:

- (a) all Brokers, Growers, Processors, Suppliers, Manufacturers, Wholesalers, Retailers and Transporters of tobacco products within the Mohawk Territory of Kahnawà:ke; and
- (b) any person or business entity that supplies goods or services to, or has a business relationship with, a Broker, Grower, Processor, Supplier,

**Comment [TDT4]:** 11/13/2015 Comment #41  
"will this affect non-native permit holders of outside permits, for example bond licenses? If so, how will this be dealt with? Will they be able to hold certification from outside, along with Kahnawà:ke certification?"

**Comment [TDT WG5]:** 4/7/2015 comment #42  
concerns use of the word 'unalienable'. Inalienable and unalienable are interchangeable.

**Comment [TDT6]:** 11/12/2015 Comment #9:  
"Peace can be achieved by whom? Urgency needed for whom?" It was felt that the law will protect the industry.

**Comment [TDT7]:** 11/13/2015 Comment #42.  
Wording suggestion to read: "...economic activity to counter any threat by..."

**Comment [TDT WG8]:** 4/7/2015 comment #30  
concern that "intent" should mention KTA and who the law is applicable to and who it is not applicable to. Section 3.1 answers this.

**Comment [TDT WG9]:** 4/7/2015 comment #31,  
it was felt that section 3.2 does not say anything about purpose and suggested the addition of "to ensure that the Industry is fair and equitable to all". See also section 6.2.

**Comment [TDT10]:** 11/13/2015 Comment #43.  
Wording suggestion to read "The purpose of this Law is:

**Comment [TDT11]:** 11/13/2015 Comment #44.  
Wording.

**Comment [TDT WG12]:** 4/7/2015 Comment #29 concerning Schedule B "Scope" having no reference to the Law and questioning whether it is applicable in our Community. Section 4 and 11.7 are the answers.

**Comment [TDT13]:** 11/13/2015 Comment #45.  
Wording suggestion to read: SCOPE / APPLICATION.

**Comment [TDT14]:** 11/12/2015 Comment #10  
concerning not being specific enough. TBD during Community hearings.

**Comment [TDT15]:** 3/31/2015 comment #11  
concerning suggestion to read "...or found operating within the Mohawk Territory of Kahnawà:ke".

**Comment [TDT WG16]:** 4/7/2015 comment #46: "Does the reference to "all persons and business entities" refer to non-natives? If so, what is the scope of the application to them; will it provide them protection of some sort? If so, should it? "The answer is that the Law is being created and will apply to Kahnawake:ro'non, and in the definitions of person and business entity in section 5.1. See also section 8.4

**Comment [TDT17]:** 11/13/2015 Comment #47  
"Does the reference to wholesalers, retailers and Transporters refer to non-Natives? If so, what is the scope of the application to them; will it provide them protection of some sort? If so, should it?" The answer is section 8.4.

Manufacturer, Wholesaler, Retailer and Transporter of tobacco products within the Mohawk Territory of Kahnawà:ke, including any person or business entity that is in the Territory temporarily for the purpose of conducting any of the activities to which this Law apply.

- 4.3 A Transportation certificate issued by the Commission is effective outside the Mohawk Territory of Kahnawà:ke, provided that the holder of the Transportation certificate is transporting tobacco products in compliance with the requirements of this Law.

## GENERAL PROHIBITION

- 4.4 Except as specifically permitted by this Law, brokering, growing, processing, supplying, manufacturing, wholesaling, retailing and transporting tobacco or tobacco products within, to or from the Mohawk Territory of Kahnawà:ke is prohibited.

## SECTION V

### 5. DEFINITIONS

- 5.1 For the purposes of this Law:

“**Broker**”, used as a verb, means to supply tobacco products to an Industry Member, usually a Manufacturer;

“**Broker**”, used as a noun, means a person who brokers tobacco products;

“**Business entity**” means a sole proprietorship, joint venture, partnership or corporation;

“**Commission**” means the Kahnawà:ke Tobacco Regulatory Commission;

“**Contribution Fee**” means the fee that is paid by holders of Manufacturing, Wholesaling or Retailing certificates to the Kahnawà:ke Community Contribution Fund in accordance with the provisions of this Law;

“**Eligible Recipient**” means a Kanien’kehá:ka of Kahnawà:ke or an organization that is recognized by the Commission as being worthy and deserving of receiving a disbursement from the Contribution Fund. For greater certainty, the Commission will only deem an external organization as being an Eligible Recipient after consultation with the Kanien’kehá:ka of Kahnawà:ke;

“**Export**” means the transportation of tobacco or tobacco products out of the Mohawk Territory of Kahnawà:ke;

“**Exporter**” means a person or business entity that exports tobacco or tobacco products;

**Comment [TDT18]:** 11/13/2015 Comment #48 : “Does the reference to any person or business entity that supplies goods or services to, or has a business relationship with a Broker, Grower, Processor, Supplier, Manufacturer, Wholesaler, Retailer, and Transporter of tobacco products within the Mohawk Territory of Kahnawà:ke including any person or business entity that is in the Territory temporarily for the purpose of conducting any activities to which this Law applies, apply to non-Natives? If so, how? Is it supposed to be providing them with some sort of protection from their own government or Laws?” The answer is section 8.4.

**Comment [TDT19]:** 11/13/2015 Comment #49: “Does the reference to a “Transportation Certificate” as being effective outside the ...Territory...provided that the holder of the Transportation certificate is...in compliance with the requirements of this Law” apply to non-Natives? What are the “requirements of this Law” regarding “Transportation”? There does not seem to be any requirements set out anywhere in the Law regarding “Transportation” specifically, other than the reference in this section. If the “Transportati...

**Comment [TDT20]:** 11/13/2015 Comment #50. “Should there be a Mandate (section) in this document, especially since one is referred to in 6.5 (c)? If so, should it appear before or after Scope?” Response is to see section 6.2. See also comment #55

**Comment [TDT21]:** 11/16/2015 comment #101. Wording suggestion to read: “...used as a verb, as in “to broker”, means.....

**Comment [TDT WG22]:** 3/31/2015 comment #12 suggested addition: “that provides goods or services.”

**Comment [TDT23]:** 11/16/2015 comment #102: “Does this apply to a “Transporter” that is a “sole proprietorship, joint venture, partnership or corporation”?”

**Comment [TDT WG24]:** 4/9/2015 comment #51: suggesting wording change to read “...Commission, hereinafter Commission”. Also, “Can they be referred to as the “KTRC” or keep “Commission”. It may be confusing since there are other “Commissions” in Kahnawà:ke such as the ...

**Comment [TDT25]:** 11/16/2015 comment#103: “Will this same type of fee be applied to other entities in Kahnawà:ke that require permits, such as the Gaming Commission and ABC issued permits? If not, should they (Gaming, ABC) be subject to the same fee? If not, why?”

**Comment [KB26]:** 12/7/2015 Comment #104. “Reference is made to “an organization”. Maybe for clarity sake some of the names of the organizations should be cited – listed as examples, such as the Kahnawà:ke Youth Center. It can state that the examples cited are “not exclusive or limited”, ...

**Comment [TDT27]:** 11/16/2015 comment #104: “What is meant by “external organization”? Is it “external” to Kahnawà:ke?”

“**Fund**” means the Kahnawà:ke Community Contribution Fund;

“**General Commission Member**” means a Kanien’kehá:ka of Kahnawà:ke who has been duly elected to the Commission pursuant to the procedures in this Law;

“**Grow**” means to cultivate, grow and harvest tobacco;

“**Grower**” means a person or business entity that grows tobacco;

“**Immediate family member**” means a person’s parent, spouse, child or sibling;

“**Import**” means the transportation of tobacco or tobacco products into the Mohawk Territory of Kahnawà:ke;

“**Importer**” means a person who imports tobacco or tobacco products;

“**Industry Commission Member**” means an Industry Member who has been duly elected to the Commission pursuant to the procedures in this Law;

“**Industry Member**” means:

- (a) for the purposes of the first election of Industry Commission Members, a person that is actively engaged in the Kahnawà:ke tobacco trade; and
- (b) for every subsequent election of Industry Commission Members, a person that holds a valid certificate or other form of authorization granted by the Commission;

“**Kahnawà:ke**”, “**Mohawk Territory of Kahnawà:ke**” or “**Territory**” means:

- (a) the lands under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke;
- (b) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke through the negotiation and resolution of land grievances;
- (c) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke as a result of any other means;
- (d) lands, which are returned to, Kahnawà:ke as lands within the meaning of subsection 91(24) of the *Constitution Act*, 1867;
- (e) the water and waterways under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke; and

**Comment [KB28]:** 11/16/2015 comment #105: Suggested wording change to “...in this Law, who is not an Industry Member;” to make it very clear who can and cannot hold this position.

**Comment [TDT WG29]:** 3/31/2015 comment #13: “Definition of “Grow-op” not defined, will only one be growing? Why should one have a monopoly?” Response: Whoever has the land to grow will be eligible to apply for a permit, there will be no monopoly. See section 8.1 and 8.2.

**Comment [TDT30]:** 11/16/2015 comment #106: “Should “significant other” be included, since this relates to page 12, Section 6.48 “Conflict of Interest – whereby “members must abstain from participating in any portion of a meeting or voting in any decision that affects an immediate family member”. Is a common-law partner, significant other, or a boyfriend/girlfriend, considered “an immediate family member?””

**Comment [TDT31]:** 11/16/2015 comment #107: “Can this person be a non-Native?”

(f) lands that Kahnawà:ke has not relinquished or ceded;

“**Kahnawà:ke Tobacco Association**” or “**KTA**” means the membership organization that is open to all Kanien’kehá:ka of Kahnawà:ke who are involved in the Kahnawà:ke tobacco industry;

“**Kahnawà:ke tobacco industry**” means any commercial activity carried on within, to and from the Mohawk Territory of Kahnawà:ke that touches or concerns tobacco or tobacco products;

“**Kanien’kehá:ka of Kahnawà:ke**” when used in the singular, means a person identified as a member of the by the Community of Kahnawà:ke and when used in the plural means all persons making up the Community of Kahnawà:ke;

“**Law**” means this *Kahnawà:ke Tobacco Law* and, unless otherwise specified, includes all regulations enacted pursuant to this Law;

“**Manufacture**” includes the packaging, labeling and distributing of tobacco products for sale to a Wholesaler;

“**Manufacturer**” means a person or business entity that manufacture tobacco products;

“**Partnership**” means an association of persons for the purpose of sharing the responsibility of operating a business entity;

“**Person**” means an individual human being;

“**Process**” with respect of tobacco products, means to process raw tobacco into a tobacco product;

“**Processor**” means a person or business entity that is engaged in the business of processing;

“**Regulations**” means all regulations enacted by the Commission pursuant to the Law;

“**Retail**” means to sell tobacco products to the public for consumption;

“**Retailer**” means a person or business entity that is engaged in the business of retailing;

“**Retail outlet**” means a person or business entity operating within the Mohawk Territory of Kahnawà:ke that sells tobacco products to the public for consumption;

“**Sell**” or “**sale**” means ordinary contracts of sale and exchange and includes to offer or expose for sale;

“**Supplier**” means a person or business entity that supplies tobacco products;

**Comment [TDT32]:** 11/16/2015 comment #108: “States it “is open to all Kanien’kehá:ka of Kahnawà:ke who are involved in the Kahnawà:ke tobacco industry”. Does “open to all” mean it’s optional? If it’s not meant to be, then it should state that it is “mandatory”. However, the question then becomes how to force “all” to become members.”

**Comment [TDT33]:** 11/16/2015 comment #109. Suggested wording: “...commercial activity which is carried on within, or to and from the ...”.

**Comment [TDT34]:** 11/16/2015 comment #110: ““identified” by whom and under what Law? Where will this be set out? The sentence should read either “of the” or “by the”, not both, as it appears in the present Law.”

**Comment [TDT WG35]:** 3/31/2015 comment #6: “Definition of Kanien’kehá:ka of Kahnawà:ke needs to be clarified as it differs from KKR.” The answer is the purpose of the KTA was to ensure that all Kahnawà:ke:ro/non have the right to participate in the industry. To be discussed at the Community meeting. Also comment #14

**Comment [TDT36]:** 11/16/2015 comment #111: “Should this list include one of the following, “producing”, “production”, or “processing”? “Processing” seems to be fitting since the word “process” and “processor” appear in the Law, but “production” does not? Should the words “produce” or “production” appear in the Law?”

**Comment [TDT37]:** 11/16/2015 comment #112: “The word “association” is a tricky word, as seen in outside laws, it is sometimes looked at in a negative way, for example, in the Criminal Code of Canada. Will it be defined by the outside in a negative way implying real or unreal “associations” with what may be considered organized crime organizations, i.e. bikers?”

**Comment [TDT38]:** 11/16/2015 comment #113: “Should this appear in the definitions as “Natural Person”, since that is the wording used on page 14 Section 8.4, of this Law. If so, it should move up in the definitions under “Manufacturer”...

**Comment [TDT39]:** 11/16/2015 comment #114: “Should the word “processing” be included if put in the list in the definition of “Manufacture”? “Processor” – of what?” Suggested wording change to “...business of processing raw tobacco product;”

**Comment [KB40]:** 11/16/2015 comment #115. Suggested wording to read “...pursuant to this Law;”

**Comment [TDT41]:** 11/16/2015 comment #116: Suggested to read: “...business of retailing tobacco products to the public for consumption;”

**Comment [TDT42]:** 11/16/2015 comment #117: “Can they be non-Native? If so, will they need a certificate? If so, will their product be regulated, inspected, certified? If so, by whom and how?”



“Supply” means to provide tobacco products to a person or business entity that holds a valid certificate or other form of authorization granted by the Commission;

“Tobacco” or “Raw tobacco” means a quantity of any of several plants belonging to the genus *Nicotiana*, of the nightshade family, whose leaves are prepared for smoking or chewing or as snuff;

“Tobacco product” means a product composed in whole or in part of tobacco, in any form in which tobacco is consumed, including loose tobacco, leaf tobacco and any extract of tobacco leaves. Without limiting the generality of the foregoing, “tobacco product” includes cigarettes, cigars, snuff and pipe tobacco;

“Transport” means to move, carry, convey, transfer or ship tobacco products by means of a vehicle;

“Transporter” means a person or business entity that is engaged in the business of transporting;

“Wholesale” means to sell tobacco products for the purpose of resale. For greater clarity, wholesale is the intermediate function between manufacturing and retailing;

“Wholesaler” means a person or business entity that wholesales tobacco products.

## SECTION VI

### 6. KAHNAWÀ:KE TOBACCO REGULATORY COMMISSION

6.1 There is established a body to be known as the Kahnawà:ke Tobacco Regulatory Commission.

6.2 The Commission will have the powers and duties provided in this Law and will administer this Law in the best interests of the Kanien'kehá:ka of Kahnawà:ke and in accordance with the highest principles of honesty, integrity and professionalism.

6.3 The Commission will function independently and autonomously from any person, group, organization or governmental body.

### GUIDING PRINCIPLES

6.4 The Commission is accountable to the Kanien'kehá:ka of Kahnawà:ke in relation to all matters enumerated in this Law.

6.5 The Commission will:

- (a) preserve and promote the self-sufficiency of the Kanien'kehá:ka of Kahnawà:ke through economic development, bearing in mind the economic

**Comment [TDT43]:** 11/16/2015 comment #118. Suggested wording: "...smoking, chewing, or as snuff;"

**Comment [TDT WG44]:** 4/7/2015 comment #34 and #35 concerning composition of Commission being made up of people within the industry and being self-regulating. Suggestion that Commission be made up of unbiased non-industry members, and should include an MCK member, industry reps, and other professionals. Response is Section VI in its entirety. The Law has been drafted by the people within the industry, there they are the experts in the field. All other organizations draft their own policies and Terms of References. The Law is now in the CDMP "the people". The Commission make up will be discussed at the Hearings and the make-up may change.

**Comment [TDT45]:** 11/13/2015 Comment #51: "Can they be referred to as the "KTRC" or keep "Commission"? It may be confusing since there are other "Commissions" in Kahnawà:ke, such as the Gaming Commission. Should put abbreviation after the definition, either, "KTRC" or, the word "Commission". Suggested wording: "...Regulatory Commission (hereinafter "Commission". Response: see Section 5.1 definition of Commission

**Comment [TDT46]:** 11/13/2015 Comment #52 Suggested wording: "...Commission has the powers and duties provided in this Law and shall administer..."

**Comment [TDT47]:** 11/13/2015 comment #53 Suggested wording: "... body and shall answer to the Kanien'kehá:ka of Kahnawà:ke as a whole." Response: see section 6.4.

**Comment [TDT48]:** 11/13/2015 comment #54 Suggested wording: "...Commission shall answer and be accountable..."

advantages that the tobacco industry provides to the Kanien'kehá:ka of Kahnawà:ke;

- (b) preserve and promote the specific right of the Kanien'kehá:ka of Kahnawà:ke to grow, manufacture, trade, sell, barter, purchase and transport any tobacco product that is available within the international community; and
- (c) fulfill its **mandate** in a manner that is fair, realistic and unbiased to all **involved**.

### **STRUCTURE**

6.6 The Commission will consist of nine (9) members, in the following proportions and **categories**:

- (a) three (3) Kanien'kehá:ka of Kahnawà:ke who are not employed or have any financial interest in the Kahnawà:ke tobacco industry (“General Commission Members”); **and**
- (b) six (6) Kanien'kehá:ka of Kahnawà:ke who are Industry Members, (“Industry Commission Members”), divided into the following **categories**:
  - (i) two (2) Manufacturers;
  - (ii) two (2) Wholesalers; and
  - (iii) two (2) Retailers.

### **TERM OF OFFICE**

- 6.7 Subject to section 6.8, Commission members will serve a term of office of two (2) years.
- 6.8 To ensure continuity, the Commission may stagger Commission members’ terms of office in accordance with such rules and procedures as the Commission unanimously approves.
- 6.9 Upon expiry of a member’s term of office, subject to the other provisions of this Law, the member is eligible to be re-elected for another term of office.
- 6.10 A Commission member is limited to two (2) consecutive terms of office.

### **ELIGIBILITY**

6.11 To be elected, or to **hold** office, as a General Commission Member or Industry Commission Member, a person:

**Comment [TDT49]:** 11/13/2015 Comment #55: “Mandate” is referred to, but there is no “mandate” or reference to “mandate” anywhere else in the Law. If there is to be a “mandate”, it should appear at the beginning of the document either before or after “Scope.” Response: section 6.2. See also comment #50 on Mandate (found at Definitions heading).

**Comment [TDT WG50]:** 3/31/2015 comment #15 proposed word change to read: “fulfill its mandate in a manner that is fair, realistic, unbiased and equitable to all involved.”

**Comment [TDT WG51]:** 4/9/2015 comment #56 “Will this structure will work and is it a fair representation of all?” To be determined.

**Comment [TDT WG52]:** 4/7/2015 comment #36: “Someone abstains if there is a conflict of interest, but the majority of the Commissioners are in the business, the conflict will remain for most and all decisions. How can they function?” . Answer is section 6.49 and section 7.1 (b) (x).

**Comment [KB53]:** 12/16/2015 PK Org: The Commission should not be made up of people with interests in the industry. The number of industry members at six (6) compared to three (3) from the community, can lend itself to the perception that the Commission is biased in favor of the industry and not the community.

**Comment [KB54]:** 11/16/2015 comment #84: Suggestion to add heading above Term of Office to read: “BY-LAWS OF THE COMMISSION (or KTRC)”. Change Term of Office to read: “TERM OF OFFICE OF COMMISSION MEMBERS”.

**Comment [TDT55]:** 11/16/2015 comment overlooked. Wording suggestion to remove the word “to”.

- (a) must be a Kanien'kehá:ka of Kahnawà:ke who is at least twenty-one (21) years old;
- (b) must not have been convicted of an indictable or felony offence, except when the offence is in relation to his or her involvement in the tobacco industry or a full pardon has been granted;
- (c) notwithstanding paragraph 6.11(b), must not ever have been convicted of an offence related to the trafficking of narcotics or associating with a criminal organization.

**Comment [TDT56]:** 11/16/2015 comment #85. Wording suggestion to read: "...tobacco industry or when a full pardon has been granted;"

**Comment [KB57]:** 11/16/2015 comment #86. Wording suggestion to read: "... trafficking of narcotics, firearms or associating with a criminal organization."

6.12 In addition to the requirements set out in section 6.11:

- (a) to be elected, or to hold office, as an Industry Commission Member, a potential candidate must satisfy the definition of "Industry Member", "Manufacturer", Wholesaler" and "Retailer" as the case may be, as provided in this Law; and
- (b) to be elected, or to hold office, as a Community Commission Member, a potential candidate must not be employed or have any financial interest in the Kahnawà:ke tobacco industry.

**Comment [TDT58]:** 11/16/2015 comment #87: "What about "brokers", "processors", "suppliers", "transporters" and "growers"? Should they be on this list?" Suggested wording to read: "...Wholesaler" or "Retailer: as provided in this Law; and"

6.13 The Electoral Officer appointed to conduct an election will have discretion to decide whether a particular person satisfies the eligibility criteria set out in sections 6.11 and 6.12.

**ELECTIONS**

6.14 The election of General Commission Members and of Industry Commission Members will be held on the same date, and will be conducted in accordance with the following procedures.

6.15 The first election of three (3) General Commission Members and six (6) Industry Commission Members will be held within ninety (90) days of the date that this Law comes into force and every two (2) years thereafter.

6.16 Not less than sixty (60) days prior to the date on which an election is to be conducted, the Commission, or Interim Commission in the case of the first election, will appoint an Electoral Officer who will be responsible for conducting an election of General Commission Members and Industry Commission Members in accordance with the provisions of this Law.

**Comment [TDT WG59]:** 3/31/2015 comment #16 and #17 regarding appointment of electoral officer by open selection. The answer is openly selected. Election procedures will be conducted in complete transparency.

6.17 The Electoral Officer will, not less than forty-five (45) days prior to the date on which an election is to be conducted, provide public notice to the Kanien'kehá:ka of Kahnawà:ke:

**Comment [KB60]:** 11/16/2015 comment #88. Suggested wording to read: "...Kanien'keha:ka of Kahnawà:ke by:". Also suggesting to have 6.15, 6.16, 6.17, as a subsection of 6.14.

- (a) informing the Kanien'kehá:ka of Kahnawà:ke of the place, date and time of the election;
- (b) inviting nominations from Kanien'kehá:ka of Kahnawà:ke for the names of persons willing and eligible to be elected to as General Commission Members; and
- (c) informing the Kanien'kehá:ka of Kahnawà:ke the names of the persons nominated for the position of Industry Commission Members and the category for which each candidate has been nominated.

**Comment [TDT61]:** 11/16/2015 comment #89: suggestion that 6.18 and 6.19 be subsections of 6.17.

6.18 Elections will be monitored and controlled by the Electoral Officer.

6.19 Within seven (7) days after the election, the Electoral Officer will publicly inform the Kanien'kehá:ka of Kahnawà:ke of the election results for General Commission Members and Industry Commission Members.

**Comment [TDT WG62]:** 3/31/2015 comment #16 and #17 regarding appointment of electoral officer. Results should be in one day. It is not appropriate to select the Electoral Officer. Add "all community members are eligible to vote for whomever they want for the commission." Response is: TBD at the community hearings.

#### **ELECTION OF GENERAL COMMISSION MEMBERS**

6.20 An unlimited number of willing and eligible persons may be nominated to be candidates for the position of General Commission Member.

6.21 Any Kanien'kehá:ka of Kahnawà:ke is eligible to vote in the election of General Commission Members.

6.22 The three (3) eligible candidates who receive the most votes will be declared to be General Commission Members.

6.23 The two (2) eligible candidates that placed fourth and fifth in the election will be considered as alternate General Commission Members and, if agreeable, will replace a General Commission Member in the event of a General Commission Member resigns or is removed from office before the expiry of his or her term.

#### **ELECTION OF INDUSTRY COMMISSION MEMBERS**

6.24 An unlimited number of eligible Industry Members may be nominated for the position of Industry Commission Members.

6.25 Only Industry Members are eligible to vote in the election of Industry Commission Members.

6.26 In cases of Industry Members that operate as a partnership, only one (1) vote will be allowed per partnership.

6.27 The two (2) eligible candidates who receive the most votes in each of the three (3) categories of Industry Commission Member, will be declared to be Industry Commission Members for that category.

## REMOVAL FROM OFFICE

6.28 A Commission member may be removed from office prior to the expiry of his or her term of office by unanimous resolution of all other Commission members.

## RESIGNATION

6.29 A Commission member may resign from office prior to the expiry of his or her term of office by giving a written notice to the Commission at least thirty (30) days prior to the date on which the resignation is effective.

## VACANCY

6.30 In the event a Commission member is removed, resigns or is unable to continue performing his or her duties for any reason the Commission member's position will, by resolution of the Commission, be declared vacant and will be filled:

- (a) in the case of a General Commission Member, by an alternate General Commission Member;
- (b) if an alternate General Commission Member is not available to fill the vacancy, a by-election will be called for the purpose of replacing the vacating General Commission Member; and
- (c) in the case of an Industry Commission Member, a by-election will be called and will follow the same procedure as for the election of Industry Commission Members.

## INTERIM COMMISSION

6.31 Until such time as a Commission is elected pursuant to the provisions of this Law, a body of three (3) persons will be appointed as an Interim Commission by the Kahnawà:ke Tobacco Association.

6.32 In addition to the specific powers and duties assigned to the Interim Commission herein, the Interim Commission will have all of the powers and duties provided by this Law to the Commission.

## OFFICERS

6.33 The Commission, will, by majority vote, appoint one (1) of its members as Chairperson. The Chairperson will preside over meetings of the Commission and will ensure the Commission follows the principles and procedures provided in this Law.

**Comment [TDT63]:** 11/16/2015 Comment #90: "The statement is rather large and all-encompassing; it should probably mention here, or somewhere else in the Law what exactly constitutes a "breach" that would be cause for removal. As well, it might be fairer if there is a statement that goes along with this one stating, if an "Industry Member" commits a breach that Industry members will be consulted and informed of the perceived breach and whether they agree. The same can be used for "General Commission Members" and the statement can state, if a General Commission Member commits a breach the Community will be informed of the perceived breach and whether they agree."

**Comment [TDT WG64]:** 3/31/2015 comment #18 concerning alternate not being clear. The answer is in section 6.23.

**Comment [TDT65]:** 11/16/2015 Comment #91: "Who will make up the 3 person "Interim Commission", will it be both "Industry" and "General"? If the goal is to have both in the actual Commission it might be wise to have both represented in the "Interim" for transparency and fairness."

**Comment [TDT WG66]:** 3/31/2015 Comment #19 "Interim Commission not clear, looks like it is set up for NO ELECTION TO TAKE PLACE." See section 6.31 for answer. Interim Commission will be in place until such time as the provisions of the Law are in place.

**Comment [TDT67]:** 11/16/2015 comment #92: "This sentence is redundant; it states the same sentiment twice. The sentence meaning would be different if there actually were, "specific powers and duties assigned to the Interim Commission". However, the only reference in the Law to the Interim Commission is here, nowhere in the Law does it set out "specific powers and duties assigned to the Interim Commission". If there were "specific powers and duties" for the "Interim Commission", what are they, where are they found? What should they be?"

- 6.34 The Commission will, by majority vote, appoint one (1) of its members as Vice-Chairperson. The Vice-Chairperson will act as Chairperson during meetings of the Commission when the Chairperson is absent or unable to act.
- 6.35 The Commission will, by majority vote, appoint two (2) of its members as Secretary and Treasurer. The Secretary and Treasurer will have such powers and duties as defined by the Commission in their appointment.
- 6.36 The Chairperson, Vice-Chairperson, Secretary and Treasurer will be considered members of Commission for all purposes under this Law.

### QUORUM

- 6.37 A quorum of seven (7) Commission members must be present to constitute a valid meeting, one of whom must be either the Chairperson or the Vice-Chairperson.
- 6.38 The quorum required to pass a resolution at a validly constituted meeting is a simple majority of Commission members in attendance at that meeting.
- 6.39 In the case of a tie vote of the Commission, the Chairperson will have a casting vote.
- 6.40 A quorum of the Interim Commission to conduct a validly constituted meeting and to pass a resolution is a simple majority of its members.

### MEETINGS

- 6.41 The Commission will meet at the call of the Chairperson or a majority of its members.
- 6.42 For the purpose of conducting ordinary business, the Commission will meet once a week or as required.
- 6.43 The Commission will conduct monthly meetings with the Kanien'kehá:ka of Kahnawà:ke to provide information on the Commission's contributions to the Kanien'kehá:ka of Kahnawà:ke and such other matters as the Commission deems appropriate.
- 6.44 Notice of any meeting of the Commission, with particulars of the agenda, will be provided to all Commission members, not less than two (2) days prior to date of the meeting.
- 6.45 Meetings or portions of meetings of the Commission, may, at the sole discretion of the Commission, be open to the public or conducted *in camera*.

**Comment [KB68]:** 11/16/2015 comment #93: "The sentence should be more specific in regards to the makeup of the 7 members. What if the 7 members "present" are made up of 6 "Industry Members" and only 1 "General Commission Member"? Will it be considered as sufficient representation for the "General" Kanien'keha:ka? Perhaps a requirement of having at least 2 "General Commission Members" "present" would be fairer." Suggested wording: "...must be either the Chairperson or the Vice-Chairperson and at least two (2) of which are General Commission Members must be present to constitute a valid meeting."

**Comment [KB69]:** 11/16/2015 comment #94: "The "simple majority" should be specified, is it 4, or 4+1? Should probably specify that at least 2 "General Commission Members" required, as per previous sentence suggestion." Suggested wording: "...a simple majority (4) of Commission members, at least two (2) of which are General Commission Members,..."

**Comment [TDT70]:** 11/16/2015 comment #95: "As per the previous sentence the "simple majority" should be stated. In this case there would only be 3 members, therefore the "simple majority" would be 2. As stated above in "Interim Commission", the question is who will make up the interim commission. Will there be an Industry Member, if so, is it a Manufacturer, Retailer, or Wholesaler, and will it be required that 1 be a General Member?" Suggested wording: "...is a simple majority (2) of its members."

**Comment [TDT WG71]:** 3/31/2015 comment #20 regarding clarification on quorum of Interim Commission. The answer is a simple majority which is 2/3.

**Comment [TDT72]:** 11/12/2015 Comment #21 & #25 regarding concern over ensuring monthly meetings take place.

**Comment [TDT73]:** 11/16/2015 comment #96: "What about "Meetings" with ALL Industry Members? There is no mention of meeting with them, which there probably should be if there are major issues that affect them. There should be meetings with them when major decisions should be made and allow them to participate and vote. What are examples of what falls under "deems appropriate"?"

**Comment [TDT74]:** 11/16/2015 comment #97: "Will they be open to all "Industry Members"?"

## REMUNERATION

6.46 Commission Members will receive such remuneration for attending meetings as the Commission may decide.

**Comment [KB75]:** 12/16/2015 PK Org: Commission members should not be remunerated, perception may be that members vote a certain way to continue to receive benefits.

## CONFLICT OF INTEREST

6.47 Industry Commission members must abstain from participating in any portion of a meeting or voting in any decision that affects the member or the member's business.

**Comment [TDT76]:** 11/16/2015 comment #98: "Should they ask "Industry Members" what would be appropriate?"

6.48 All Commission members must abstain from participating in any portion of a meeting or voting in any decision that affects an immediate family member.

**Comment [TDT77]:** 11/13/2015 Comment #36 concerning having majority of Commissioners in the business will create conflict for most and all decisions – how can this be functional? Response is that there will be three Community members on the Commission. This is to be discussed further during community Hearings. See also Section 6.6(a), 6.49, and 7.1(b) (x).

6.49 The Commission will enact a mandatory Code of Ethics and Code of Conduct to be signed by, and binding upon, all Commission members.

**Comment [KB78]:** 11/16/2015 comment #99. Suggested wording: "...any decision that affects the specific member of or the specific member's business."

## SECTION VII

### 7. POWERS AND DUTIES OF THE COMMISSION

7.1 In addition to any other powers that may be provided to it in this Law, the Commission will have the power to:

**Comment [TDT79]:** 11/16/2015 comment #100: "What constitutes "immediate family member"? Does this include "girlfriend", "boyfriend", or "significant other"?"

(a) grant, suspend, renew or revoke certificates or other forms of authorization in the following categories:

**Comment [TDT80]:** 11/16/2015 comment overlooked. Suggested wording: "... may be provided in this Law,..."

- (i) Broker;
- (ii) Grower;
- (iii) Processor;
- (iv) Supplier;
- (v) Manufacturer;
- (vi) Wholesaler;
- (vii) Retailer;
- (viii) Transporter;
- (ix) and such other categories as the Commission deems necessary;

(b) enact and administer such regulations as are authorized by this Law, including regulations that:

- (i) prescribe the form and content of applications for certificates or other forms of authorization;
  - (ii) prescribe the documents to be produced and the information to be provided by an applicant for a certificates or other forms of authorization or the renewal thereof;
  - (iii) prescribe the procedures for the processing or hearing of applications;
  - (iv) prescribe the form and content of certificates or other forms of authorization;
  - (v) prescribe the fees for granting and renewing certificates or other forms of authorization;
  - (vi) establish appropriate terms and conditions for, and monitor the use of, certificates or other forms of authorization;
  - (vii) prescribe the form and content of reports to be produced by an inspector;
  - (viii) prescribe the manner in which shipments of tobacco products are to be sealed at the point of origin and verified at the point of delivery;
  - (ix) declare a product to be tobacco or a tobacco product for the purposes of this Law;
  - (x) prescribe the procedures for hearings, reviews and appeals conducted pursuant to this Law;
  - (xi) prescribe quality standards and controls for tobacco and tobacco products;
  - (xii) prescribe employment standards for workers in the Kahnawà:ke tobacco industry;
  - (xiii) prescribe standards for health, safety, security and environmental protection in relation to the Kahnawà:ke tobacco industry and persons employed in the Kahnawà:ke tobacco industry; and
  - (xiv) any other regulation necessarily related to the Commission's mandate.
- (c) amend regulations as the Commission deems necessary;
- (d) act as liaison with comparable authorities in other jurisdictions; and.

**Comment [TDT81]:** 11/13/2015 comment #22  
Suggestion to combine (i) and (iv).

**Comment [TDT82]:** 11/13/2015 Comment #22  
same as above.

**Comment [TDT WG83]:** 4/7/2015 comment #28 concerning adding "general duties": we should know what they are doing on the job. See also section 11.1 and 11.5. Asked to add duties, classifications, and qualifications.

**Comment [TDT WG84]:** 4/9/2015 comment #57. Suggested wording: "...purposes of this Law, based on Regulation;"

**Comment [TDT WG85]:** 4/7/2015 comment #36 concerning having majority of Commissioners in the business will create conflict for most and all decisions – how can this be functional? Response is that there will be three Community members on the Commission. This is to be discussed further during community Hearings. See also Section 6.6(a), and 6.49.  
Answer is section 6.6 (a). See also section 6.49.

**Comment [TDT86]:** 11/16, 2015 Comment #58: "To be carried out by whom? Does (e) found below apply here?"

**Comment [KB87]:** 12/16/2015 PK Org: Should the Commission have the power to prescribe standards in relation to employment?

**Comment [TDT88]:** 11/13/2015 Comment #22 requesting to clarify or define the employment standards. Response is that the employment standards will be the same as all the organizations within the Community of Kahnawà:ke.

**Comment [TDT WG89]:** 3/31/2015: comment # 5: a question regarding worker's compensation, labor rights and benefits, health safety, security and MSI. The answer is in 7.1 b) (xii) and 7.1 b) (xiii).

**Comment [TDT WG90]:** 3/31/2015 comment #23: "Clarify standards for health, safety, security and environmental protection, more details are needed. Within this Law, no mention is made (employees are protected from any standards.)". "The answer is that regulations will clarify this question.

**Comment [KB91]:** 12/16/2015 PK Org: What is the intent of section 7 (b)(xiv)?

**Comment [TDT WG92]:** 3/31/2015: comment #1: there was a question on proper accounting. The answer is in this sub-paragraph See Section 10 also.

**Comment [TDT93]:** 11/16/2015 Comment #59. Wording.



- (e) hear and decide any matter concerning the use of a certificate or other form of authorization granted by the Commission.

## SECTION VIII

### 8. CERTIFICATES AND OTHER FORMS OF AUTHORIZATION

- 8.1 No person or business entity is permitted to Broker, grow, process, supply, manufacture, wholesale, retail or transport tobacco or tobacco products within, to or from the Mohawk Territory of Kahnawà:ke unless that person or business entity holds a valid certificate or other form of authorization granted by the Commission.
- 8.2 To allow for this Law to be implemented in an orderly fashion, any person or business that holds a **license**, permit, certificate or other authorization in relation to the tobacco industry that was issued by an agency or authority other than the Commission must relinquish the **license**, permit, certificate or other authorization within six (6) months of the date this Law comes into effect, failing which that person or organization will no longer be eligible to apply for or to hold a certificate or other form of authorization from the Commission.
- 8.3 Certificate or other forms of authorization granted by the Commission may not be sold, transferred or otherwise assigned.

### CERTIFICATE ELIGIBILITY

- 8.4 To be eligible to apply for and hold a certificate or other form of authorization from the Commission, a person must be a natural person who is a Kanien'kehá:ka of Kahnawà:ke, over the age of twenty-one (21) years.
- 8.5 To be eligible to apply for and hold a certificate or other form of authorization from the Commission, a business entity must be wholly owned and operated by one or more Kanien'kehá:ka of Kahnawà:ke, all of whom are over the age of twenty-one (21) years.
- 8.6 Commencing six (6) months from the date on which this Law comes into effect, any person or organization that holds a **license**, permit, certificate or other authorization in relation to the tobacco industry that was issued by an agency or authority other than the Commission is not eligible to apply for or hold a certificate or other form of authorization from the Commission.

### APPLICATIONS

- 8.7 The Commission may, upon receiving an application in the prescribed form and the applicable fee, grant a certificate or other form of authorization granting a person or business entity permission to conduct business as a Broker, Grower, Processor,

**Comment [TDT94]:** 11/16/15 Comment #60: "If the Commission "grants" the certificates/authorization, how can they hear/decide on matter?" Response is Section 7 in its entirety. See also Comment #58 section 7.1 (b) (x).

**Comment [TDT95]:** 11/16/2015 Comment #61: "What exactly does this statement "orderly fashion" mean? What sentiment is trying to be conveyed?"

**Comment [TDT WG96]:** 4/9/2015 comment #61: "How will this be enforced? What if they don't comply?" To be explained at the hearing. Drafting Team suggestion to change wording to: (this section only comes into force when Kahnawà:ke has full recognition for Kahnawà:ke certificates of operation).

**Comment [TDT WG97]:** 4/9/2015 comment #62 suggestion to read 'CERTIFICATE ELIGIBILITY'.

**Comment [TDT WG98]:** 4/9/2015 comment #62, #66, and #67: Concerning non-Native compliance. "How will this work in regards to a non-Native person? For example, Section IV SCOPE, 4.3 states "A Transportation certificate issued by the Commission is effective outside the Mohawk Territory....." what if it is a non-Native Transporter? How would they meet the requirement of being "Kanien'keha:ka of Kahnawà:ke? As well, what if the non-Native is in partnership with a Native?" Response: Will be explained at the hearing. Drafting Team suggestion to change wording to: (this section only comes into force when Kahnawà:ke has full recognition for Kahnawà:ke certificates of operation).

**Comment [TDT WG99]:** WG 3/31/2015 comment #6: "Definition of Kanien'keha:ka of Kahnawà:ke needs to be clarified, as it differs from the KKR." The answer is to be looked at, at the Community meeting. See definition section also.

**Comment [TDT100]:** 11/16/2015 Comment #63: "How will this be enforced, what if they do not comply?" Response is Section 11.7.

Supplier, Manufacturer, Wholesaler, Retailer or Transporter of tobacco products within the Mohawk Territory of Kahnawà:ke.

- 8.8 The Commission may establish a procedure that will expedite the processing of an application received from a person who, or business entity that, operated a business within the Kahnawà:ke tobacco industry prior to the enactment of this Law.

## **DECISIONS**

- 8.9 Decisions of the Commission regarding granting, denying, suspending, revoking, or amending of a certificate or other form of authorization will be in writing and include the reasons on which the decision is based.
- 8.10 Decisions of the Commission will be signed by the persons who rendered the decision and will be held in the Commission's administrative offices.
- 8.11 The Commission may review, amend or revoke any decision it has rendered when:
- (a) new information is discovered which, if it had been known in time, might have led to a different decision;
  - (b) a party was unable, for a good reason, to be heard at the time the decision was made;
  - (c) an error in the Commission's procedure could make the decision invalid.
- 8.12 If an applicant provides untruthful or misleading information to the Commission the application will be denied and the applicant will not be allowed to re-apply.

**Comment [TDT101]:** 4/7/2015 comment #24  
"No mention of APPEAL, APPEAL SECTION HAS TO BE IN Law not in the regulations."  
The response was that the answer is in section 8.11.

## **HIRING PREFERENCE**

- 8.13 All holders of certificates or other form of authorization must in recruiting, training and hiring employees, give preference to qualified Kanien'kehá:ka of Kahnawà:ke in all job categories particularly management positions.

**Comment [TDT102]:** 11/16/2015 Comment #64: "Will there be an appeals process? If so, where would it go?"  
Response: TBD in Regulations.

## **SECTION IX**

### **PRICE CONTROLS**

- 9.1 To maintain the viability, stability and profitability of the Kahnawà:ke tobacco industry, the Commission may establish the minimum and maximum prices at which:

**Comment [TDT WG103]:** 4/9/2015 comment #65: "There should probably be "Regulations" for this whole Section."  
Response: there will be.

**Comment [KB104]:** 11/16/2015 Comment #65.  
Suggested wording: "...the Commission shall establish..."

- (a) a Grower sells raw tobacco to a Processor or **Broker**;
- (b) a Processor or Broker sells tobacco products to a **Manufacturer**;
- (c) a Manufacturer sells tobacco products to a Wholesaler;
- (d) a Wholesaler sells tobacco products to a Retailer or retail outlets; and
- (e) a Retailer or retail outlet may sell tobacco products to the general public.

**Comment [TDT WG105]:** /4/9/2015 Comment #66: non-Native compliance? See Section 8.4.

**Comment [TDT106]:** 11/16/2015 Comment #67: non-Native compliance? See Section 8.4.

**Comment [TDT WG107]:** 4/9/2015 comment #68: "Define "tiers", "categories". What are these based on?"  
Response: it will be defined in regulations.

**Comment [TDT WG108]:** 4/9/2015 Comment #69: "Fluctuation" based on what factors?  
Response: market price also TBD in Regulations.

9.2 To maintain the viability, stability and profitability of the Kahnawà:ke tobacco industry, the Commission may:

**Comment [TDT WG109]:** 3/31/2015: comment #1 there was a question on proper accounting. The answer is in this sub-paragraph. See also Section 7.1(b)(xiv).

- (a) define a list of tiers for the different categories of holders of certificates or other form of authorization; **and**
- (b) establish the minimum and maximum fluctuation in pricing between those **tiers**.

**Comment [TDT110]:** 11/16/2015 comment #70: "Will other Regulatory based bodies, such as Poker Houses with ABC & Gaming permits, Restaurants with ABC permits, stores/distributors with ABC permits, be subject to the same or similar requirement of contributing to the "Fund"?"

**Comment [TDT WG111]:** 4/9/2015 Comment #71: "What uses will it be put to, what criterion, who decides where it will be distributed, how much is limit?"  
Response: See section 7 in its' entirety, and 10.10.

## SECTION X

### 10. COMMUNITY CONTRIBUTION FUND

**Comment [KB112]:** 12/16/2015 PK Org: Community fund "trust", there are laws that deal with this type of fund, the Commission should not be involved in the administration of the fund. For transparency.

10.1 There is established a fund to be known as the Kahnawà:ke Community Contribution Fund (the "**Fund**").

10.2 The Fund will be considered a trust fund for the benefit of the Kanien'kehá:ka of Kahnawà:ke.

**Comment [TDT WG113]:** 4/9/2015 Comment #72: "Perhaps make another body the "trustee", like Caisse Populaire, for purposes of transparency."  
Response: To be determined. See also 10.5: 'or other financial institution or instrument' which is to be determined also.

10.3 The Commission will be the trustee of the Fund and is responsible for **administering** the Fund in accordance with the highest standards of honesty, integrity and **professionalism**.

**Comment [TDT WG114]:** 4/7/2015 comment #25. Suggested wording: "will report monthly". See also 6.43.

10.4 The Commission will report to the Kanien'kehá:ka of Kahnawà:ke on a regular basis regarding all monies received into the Fund and disbursed from the **Fund**.

**Comment [TDT115]:** 11/16/2015 comment #73: "What about stating it will also report to the Industry Members, since that is where the funds will come from?"  
Response: Drafting team suggests no change to wording.

10.5 The Commission will establish and maintain an account at the Caisse Populaire Kahnawà:ke, or such other financial institution or instrument as the Commission may select, for the purpose of administering the **Fund**.

**Comment [TDT116]:** 11/16/2015 comment #74: "Will it be audited? Example of "instrument"?"  
Response: TBD in regulations.

10.6 The Fund will be held and administered independently and autonomously from any person, group, organization or governmental **body**.

**Comment [TDT WG117]:** 3/31/2015 A second comment #3 "Will non biased **Committee make** ...

### CONTRIBUTION FEES

**Comment [TDT118]:** 11/16/2015 Comment #75: "What is this based on? By whom will it be "held" and "administered" if it is "**independent**" ...

10.7 The fees contributed to the Fund will comprise:

**Comment [TDT WG119]:** 3/31/2015 comment #2 on all tobacco stores contributing equally. The answer is 10.7, 10.8, **10.9**. ...

- (a) fees collected by the Commission for the granting or renewal of certificates or other forms of authorization (“Certification Fees”);
  - (b) Contributions Fees, as hereinafter described; and
  - (c) fines levied and collected by the Commission.
- 10.8 Contribution Fees will be imposed on all finished tobacco products distributed within the Mohawk Territory of Kahnawà:ke, including tobacco products that are imported into and exported from the Mohawk Territory of Kahnawà:ke.
- 10.9 The appropriate Contribution Fee will be paid by a Manufacturer, Wholesaler or Retailer upon placing his or her order for Contribution Stamps to be affixed to all tobacco products.
- 10.10 All Certification Fees and Contribution Fees collected by the Commission will be deposited into the Fund and will be disbursed in accordance with the following priorities:
- (a) to pay the operational and administrative costs of the Commission;
  - (b) to establish a fund to assert and, if necessary, defend this Law;
  - (c) to distribute to Eligible Recipients.

**Comment [TDT120]:** 11/16/2015 comment #76: “What scale will the fees be based on?” Response: TBD in Regulations.

**Comment [TDT121]:** 11/16/2015 comment #77: “The fees for stamps do amount to a “stamp tax” (levy/duty) even if they are not actually labeled as such, will there be a discount for larger orders?”

**Comment [TDT WG122]:** 4/7/2015 comment #26: “Clarify who are these people, who can access the funds, people on the Kahnawà:ke Membership list?” The answer will be in the application process. See 10.17 also.

### **CONTRIBUTION STAMPS**

- 10.11 Evidence that the appropriate Contribution Fee has been paid on tobacco products will be reflected by the affixation of a Contribution Stamp on all tobacco products imported, exported or manufactured within, from or to Mohawk Territory of Kahnawà:ke.
- 10.12 The Commission will design and administer the distribution of Contributions Stamps.
- 10.13 The Commission will issue a Contribution Stamp only when payment of the appropriate Contribution Fee has been received or arrangements for payment, satisfactory to the Commission, have been made.
- 10.14 The Commission will establish rules and procedures to ensure that Contribution Stamps are properly issued and affixed to tobacco products prior to importation, exportation, distribution or sale of the tobacco product within, to or from Mohawk Territory of Kahnawà:ke.
- 10.15 Tobacco products that do not have the appropriate Contribution Stamp affixed may not be imported, exported, distributed or sold within, from or to the Mohawk Territory of Kahnawà:ke.

**Comment [TDT WG123]:** 4/9/2015 Comment #78: “What are examples of “arrangements”?” What are the “arrangements” based on?” Drafting Team: to be determined in Regulations.

**Comment [TDT124]:** 11/16/2015 comment #79: “How will this be enforced?” Response: TBD in Regulations.

**DISBURSEMENTS FROM THE FUND TO ELIGIBLE RECIPIENTS**

- 10.16 Subject to the provisions of this Law, the Commission will decide when, to whom and in what amounts monies from the Fund will be disbursed to Eligible Recipients and.
- 10.17 The Commission will establish specific criteria that will be used to determine whether a person or organization qualifies as an Eligible Recipient and will prepare the appropriate forms to be used by Eligible Recipients to apply for a disbursement from the Fund.

**Comment [TDT WG125]:** 4/7/2015 comment #27 concerning accessing information on who can receive funds. Response: Will be transparent and reports will be monthly. See also section 10.17.

**Comment [TDT126]:** 11/16/2015 comment #80. Wording.

**SECTION XI**

**11. ADMINISTRATION**

- 11.1 The Commission will employ the inspectors, administration and support staff and will retain the professional assistance that the Commission requires to fulfill its mandate.
- 11.2 The Commission will maintain an office within the Mohawk Territory of Kahnawà:ke.
- 11.3 The Commission will keep accurate records of the operations of the Commission, including but not limited to:
  - (a) agenda and minutes of meetings of the Commission;
  - (b) resolutions and decisions of the Commission;
  - (c) certificates or other forms of authorization issued by the Commission;
  - (d) fees collected by the Commission; and.
  - (e) expenditures made by the Commission.
- 11.4 The Commission will determine which records will be accessible to Kanien'kehá:ka of Kahnawà:ke.

**Comment [TDT WG127]:** 7/7/2015 comment #28 concerning adding "general duties": "we should know what they are doing on the job." See section 11.5 and 7 vii also.

**Comment [TDT128]:** 11/16/2015 comment #81. Wording.

**INSPECTORS**

- 11.5 The Commission will appoint one or more inspectors to ensure full compliance with the requirements of this Law.

**Comment [KB129]:** 12/16/2015 PK Org: Inspectors regulations, role, authority, training???

**Comment [TDT WG130]:** 7/7/2015 comment #28 concerning adding "general duties": "we should know what they are doing on the job." See section 11.1 and 7 vii also.

**ENFORCEMENT**

**Comment [TDT131]:** 11/16/2015 comment #82: "Is 1 a realistic number with the amount/types of businesses and different categories of seller, transporter, etc.?"

- 11.6 In addition to any other sanction that the Commission may impose under this Law, if the Commission, in its sole discretion determines that the holder of a certificate or other form of authorization has breached any provision of this Law, the Commission may impose a fine for each instance of such breach of not less than One Thousand (\$1,000.00) Dollars and not more than Twenty Thousand (\$20,000.00) Dollars.
- 11.7 The Kahnawà:ke Peacekeepers have authority to investigate and initiate the appropriate proceedings for any breach of this Law that lies outside the scope of the Commission's mandate to remedy.

**Comment [KB132]:** 12/16/2015 PK Org: Must be defined better. Regulations must be developed.

**Comment [TDT WG133]:** 4/9/2015 comment #83: "What defines "breach"? Are they responsible for everything? For example, are they responsible for looking at "stamps" like a Customs Officer?" Response: the Peacekeepers are not responsible for everything, only what is 'outside the scope of the Commission's mandate'. This is under the purveyance of the Inspectors. TBD in Regulations.

### **JUDICIAL PROCESS**

- 11.8 The Court of Kahnawà:ke has sole and exclusive jurisdiction to hear and decide any charges laid by the Kahnawà:ke Peacekeepers for a breach of this Law.

**Comment [KB134]:** 12/16/2015 PK Org: What lies outside the scope of the law and the Commission's mandate?

### **COMING INTO FORCE**

- 11.9 This Law comes into force on the date that it is adopted by the Kanien'kehá:ka of Kahnawà:ke.

**Comment [TDT WG135]:** 4/7/2015 Comment #29: "Schedule B: Scope, says nothing about the Law, can it be applied in our community?" Section 4 and 11.7 are the answers.

DRAFT