

REGULATION RESPECTING THE RULES OF THE ADMINISTRATIVE TRIBUNAL

K.R.L. c., J-1-r.5

Enacted by Mohawk Council Executive Directive (MCED) #XX/2023-2024 on _____, 2023

SECTION I – GENERAL

1. PURPOSE

- 1.1 The purpose of this regulation is to establish the rules of evidence and procedure for the Administrative Tribunal. It will ensure the simple, flexible, and efficient management of proceedings in accordance with the principles of natural justice.

2. APPLICATION

- 2.1 For purposes of clarity, these rules do not apply to proceedings brought pursuant to the *MCK Disciplinary Measures Regulations*.

3. DEFINITIONS

- 3.1 **Affirmation** means a solemn and formal declaration given by a person promising to tell the truth when giving testimony as a witness or making an affidavit.
- 3.2 **Decision-maker** means a member of the Administrative Tribunal.
- 3.3 **Government or government entity** means, for the purposes of this regulation, the Mohawk Council of Kahnawà:ke or a public body performing a function of government in Kahnawà:ke.
- 3.4 **Incidental petition** means an application to the Administrative Tribunal during proceedings before the time of final decision which requests that a specific interim order or decision be made by the Administrative Tribunal.
- 3.5 **Interest of justice** means pursuing a course of action or conduct that is fair and equitable.
- 3.6 **Judicial notice** means the acceptance of a matter of fact or law by the Administrative Tribunal without the necessity of formal proof in the form of evidence presented by one of the parties.
- 3.7 **Justice Services** means the Justice Services Division of the Mohawk Council of Kahnawà:ke.
- 3.8 **Lead Decision-maker** means the Decision-maker who, in addition to the regular duties of a Decision-maker, has certain administrative responsibilities attributed to them by law or regulation.
- 3.9 **Natural justice** means the assurance that the principles and procedures of fair and unbiased decision-making are followed and made in good faith.

- 3.10 **Petition** means an application instituting proceedings before the Administrative Tribunal. The petition requests that a specific order or decision be made by the Administrative Tribunal and forms the basis of the entire proceeding.
- 3.11 **Professional secrecy** means the duty of a professional, including a priest or other minister of religion not to share confidential information entrusted to them by a client by reason of their profession or position. A duly authorized representative is also bound by this duty.
- 3.12 **Representative** means 1) a person authorized to practice law in the province; 2) anyone otherwise authorized by law to represent a person who does not have the capacity to represent themselves; or 3) anyone who has prior authorization from the Administrative Tribunal to represent the party.
- 3.13 **Served** means formal delivery of a document or proceeding to a person.
- 3.14 **Subpoena** means the usual writ for the summoning of witnesses or the submission of evidence, as records or documents, before a court or other deliberative body.
- 3.15 **Tribunal** means the Administrative Tribunal.

4. COMPUTATION OF TIME

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

5. PROPORTIONALITY

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

6. POWERS OF TRIBUNAL

- 6.1 In the absence of provisions applicable to a particular situation, the Tribunal may apply any procedure consistent with principles of natural justice.
- 6.2 The Tribunal has all the powers necessary to exercise its jurisdiction, including the power to decide any issue of law or fact that may be required. This includes making any order, including a provisional order, it considers appropriate to safeguard the parties' rights.
- 6.3 The Tribunal may relieve a party from failure to act within the time prescribed by law or regulation if:
- 1) the party establishes they were unable, for valid reasons, to act sooner; and
 - 2) if the Tribunal considers that no other party suffers serious harm from the failure to act.

- 6.4 The Tribunal may accept a written proceeding despite a defect of form or an irregularity.
- 6.5 No proceedings may be brought against Decision-makers for any act done in good faith in the performance of their duties

7. METHODS OF SUBMISSION

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

8. DATE OF SUBMISSION

- 8.1 The date of filing of a petition, incidental petition, and any required documents and/or notices will be the date it is received at the offices of Justice Services.

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

9. COMMUNICATION

- 9.1 Any petition, incidental petition or correspondence addressed to the Tribunal must also be sent to the other parties.
- 9.2 Any subsequent correspondence must specify the file number assigned to the matter at issue.
- 9.3 Every party or representative must inform the clerk without undue delay of any change in address or other contact information.
- 9.4 Decision-makers are not to be contacted directly by telephone or remote means concerning a proceeding by any individual party, witness or representative. Any such calls will be forwarded to the clerk.

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

SECTION II - INITIAL STAGES OF PROCEEDING

10. PETITION

- 10.1 The petition will be addressed to the Tribunal.
- 10.2 Except if provided for otherwise in an enabling law, a party may file a petition to the Tribunal within thirty (30) days of receiving the decision they are contesting.
- 10.3 In the event of a private dispute a party will have thirty (30) days from the date or knowledge of the facts giving rise to the proceeding to submit a petition to the Tribunal.

10.4 A petition must:

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

The petition must include a copy of any decision that is being contested.

Justice Services will make available a petition form to assist parties with submitting an application to the Tribunal.

10.5 Upon receipt of a validly filed petition, the clerk will send a copy of the petition to the respondent and to any persons indicated by law.

11. RESPONSE

11.1 A response must:

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

Justice Services will make available a response form to assist parties with submitting an application to the Tribunal.

12. COPY OF RECORD

12.1 The respondent must within thirty (30) days of receipt of a copy of the petition, send a copy of the record (where applicable) relating to the matter and the name, address, phone number and fax number of its representative to the clerk and to the petitioner.

Access to any confidential record sent pursuant to this article will continue to be confidential according to the rules applicable to the government or government entity that sent it.

- 12.2 If a respondent fails to send a copy of the case record within the time prescribed in article 12.1, the petitioner may request by incidental petition that the Tribunal fix an indemnity it considers fair and reasonable considering the circumstances of the case and the extent of the delay.

13. MANDATORY REVIEW BY SKÉN:NEN AONSÓN:TON

- 13.1 Upon filing of a petition to the Tribunal in a private dispute, the clerk will refer the file to Skén:nen Aonsón:ton for mandatory review and assessment in accordance with the protocol for transfer of files between the Tribunal and Skén:nen Aonsón:ton.
- 13.2 Skén:nen Aonsón:ton, in accordance with the protocol for transfer of files, will refer the file back to the Tribunal if:
- 1) it is determined during the mandatory review and assessment that the file is not appropriate for resolution using alternative dispute resolution;
 - 2) a party does not consent to the transfer of the file;
 - 3) a party does not participate in good faith or voluntarily withdraws from the alternative dispute resolution process; or
 - 4) a resolution cannot be reached.

14. RETURN TO GOVERNMENT OR GOVERNMENT ENTITY

- 14.1 The Tribunal may, after examining the petition and the contested decision, determine that the government or government entity failed to rule on certain issues although required to do so by law. If the date of the hearing has not been set, the Tribunal may suspend the case for the time it determines so that the government or government entity may act.

If, at the expiry of the time allotted to the government entity to rule on certain issues, the petitioner maintains their proceeding before the Tribunal, the proceeding before the Tribunal will resume.

15. REQUEST FOR CLARIFICATION

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

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

- 15.2 If the party does not meet one of the requirements provided for in article 15.1 within the set time period, the Tribunal may, depending on the circumstances:
- 1) refuse the filing of the document or evidence; or
 - 2) refuse to receive any evidence related to the required information, document or evidence and proceed with the hearing.

16. INCIDENTAL PETITIONS

16.1 Any incidental petition to the Tribunal must be made in writing and will:

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

Justice Services will make available an incidental petition form to assist parties with submitting an application to the Tribunal.

16.2 If the person making the incidental petition is not one of the parties, in addition to the requirements listed at article 16.1, the incidental petition must also indicate their name, address and any other contact information. If the petitioner is represented, the incidental petition must also contain the same information for the representative.

17. PAYMENT OF FILING FEES OR EXPENSES

17.1 A document will be considered validly filed once any required fees or expenses are paid unless a special dispensation is granted by the Commissioner of Justice.

17.2 If the person filing the document is unable to pay the required fees or expenses the person may request a special dispensation from the Commissioner of Justice and if granted the dispensation will replace the payment of the fees or expenses.

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

18. SUSPENSION OF EXECUTION OF CONTESTED DECISION

18.1 A petition filed before the Tribunal will not suspend the execution of a contested decision, unless:

- 1) A provision of law provides otherwise, or;
- 2) Upon an incidental petition a decision-maker orders suspension of the execution of the contested decision based on reasons of urgency or the risk of serious and irreparable harm. This incidental petition will be heard and decided on a priority basis.

19. DISCONTINUANCE

19.1 A petition or any incidental petition may be discontinued by filing at the offices of Justice Services a signed written notice from the discontinuing party or their representative.

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

20. PARTY DESIGNATED BY LAW

20.1 In public matters the parties will be the petitioner, government or government entity, and any person designated by law.

21. INTERVENTION

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

22. REQUIRED PARTY

22.1 Every party to a proceeding may, on an incidental petition, with the authorization of the Tribunal and on the conditions it determines, require the participation of a third party where necessary to fully resolve the dispute.

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

23. DISMISSAL OF PROCEEDING

23.1 The Tribunal may, upon an incidental petition, dismiss a proceeding it deems improper or unreasonably delayed, or subject it to certain conditions.

24. JOINDER

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

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

25. REPRESENTATION

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

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

25.2 Any person required to obtain prior approval from the Tribunal to represent a party must:

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

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

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

Before rendering a decision on the request, the Decision-maker will ensure that the choice of a party to be represented by a person who does not meet the requirements at article 25.1 of this regulation is an informed one. In doing so, they will advise the party that:

- 1) they will not have recourse to various remedies which might be available to them if they were represented by a lawyer who performed inadequately;
- 2) Kahnawà:ke laws do not require that persons acting as such a representative receive any training or demonstrate any level of expertise before being authorized to represent;
- 3) while certain minimum standards of competence are expected from representatives who are lawyers, no such standards are imposed upon representatives who are not lawyers;
- 4) the representative will be required to follow all applicable rules of procedure of the Tribunal; and
- 5) if they are not satisfied with the representation they are receiving, they have a right to dismiss their representative in accordance with articles 25.5 and 25.6 of this regulation.

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

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

- 25.6 Anyone wishing to cease representing a party must provide written notification to all parties and the Tribunal without delay.

- 25.7 Where a party is represented, the communications of the Tribunal, except the notice of hearing and the Tribunal's decision, must be addressed to the party and the representative.

26. CASE MANAGEMENT CONFERENCE

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

The purpose of the case management conference is to:

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

Should the parties fail to agree on their own, the Tribunal will determine a binding timetable for the proceedings;

- 2) Determine how the conduct of the proceedings may be simplified or accelerated and the hearing shortened, including clarifying the questions at issue or admitting any fact or document; and
- 3) In a private dispute and when determined to be appropriate, invite the parties to reconsider resolving the issue using alternative dispute resolution provided through Skén:nen Aonsón:ton.

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

- 26.2 The minutes of the conference will be drawn up by the clerk and signed by the Decision-maker having conducted the conference.
- 26.3 If one of the parties fails to attend the conference, the Decision-maker will record the failure and make the decisions they consider appropriate.
- 26.4 If one of the parties fails to comply with the timetable, the Decision-maker may on an incidental petition make the appropriate decisions in the interests of justice, including dismissal of case.

27. PRE-HEARING CONFERENCE

- 27.1 The Decision-maker may call the parties to a pre-hearing conference if they consider it useful and circumstances allow it.
- 27.2 The purpose of the pre-hearing conference is to:
 - 1) define the questions to be dealt with at the hearing;
 - 2) clarify the allegations and the conclusions sought;
 - 3) ensure that all documentary evidence is exchanged by the parties;
 - 4) plan the conduct of the proceedings and proof at the hearing;
 - 5) examine the possibility for the parties admitting certain facts or proving them by sworn statements; and
 - 6) examine any other question likely to simplify or accelerate the conduct of the hearing.
- 27.3 Minutes of the pre-hearing conference will be drawn up by the clerk and signed by the parties and by the Decision-maker present at the conference.

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

28. NOTICE OF HEARING

- 28.1 The clerk will coordinate and schedule hearing times with the parties.
- 28.2 Notice of the hearing will be sent to the parties no less than two (2) weeks before the hearing or within the time fixed by law, stating:

- 1) the purpose, date, time and place of the hearing;
- 2) that the parties have the right to be represented before the Tribunal; and
- 3) that the Tribunal has the authority to proceed, without further delay or notice, despite the failure of a party to appear at the time and place fixed if no valid excuse is provided.

28.3 The Tribunal will, so far as is possible, hold the hearing at a date and time when the parties and any witnesses can attend without unduly disrupting their usual occupations.

29. ADDITIONAL TIME FOR HEARING

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

30. POSTPONEMENT

30.1 A party requesting postponement of a hearing must file an incidental petition to the Tribunal as soon as the grounds for postponement become known.

In addition to the requirements found at article 16.1 of this regulation, an incidental petition for postponement must also include:

- 1) the consent of the other parties, if applicable;
- 2) reasons for postponement;
- 3) if the reason for postponement is based on the need for the services of an expert, an indication that the expert has accepted the mandate and that they will be available to testify at the next date to be set, if possible;
- 4) the earliest dates when all the parties, their representatives, and witnesses, including any experts, are available.

30.2 The postponement may be granted if it is 1) based on serious grounds and 2) the interests of justice will be better served as a result.

No postponement will be granted solely on agreement of the parties.

30.3 The Tribunal may refuse an application for postponement due to:

- 1) the nature of the matter;
- 2) the impossibility to set a new hearing at an early enough date;
- 3) the obligation to comply with a time period prescribed by law;
- 4) the conduct of the party submitting the application; or
- 5) a party sustaining prejudice as a result of the postponement.

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

31. SUBPOENA

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

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

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

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

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

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

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

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

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

31.6 Every person who refuses to give testimony and/or comply with an order of the Tribunal is guilty of contempt.

SECTION III - HEARING

32. CONDUCT OF HEARING

32.1 The Tribunal has full authority over the conduct of the hearing. It will, in conducting the proceedings, be flexible. It will ensure the merits of the case will be heard despite any procedural errors provided it is in the interests of justice and does not impact procedural fairness.

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

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

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

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

- 32.5 The Tribunal will:

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

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

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

33. ORDER OF PROCEEDINGS

- 33.1 The petitioner will give their evidence first, including the production of any witnesses or documents. The respondent will have the right to cross-examine the witnesses, including the petitioner where the petitioner has testified.
- 33.2 After the petitioner has given evidence, the respondent will give their evidence, including the production of any witnesses or documents. The petitioner will have the right to cross-examine witnesses, including the respondent where the respondent has testified.

34. EVIDENCE

- 34.1 Unless it has already been filed at the offices of Justice Services for the purposes of the pre-trial conference, a party who intends to produce a document as evidence at the hearing must, not later than 15 days before the hearing, send a copy of the document to the other parties and to each member of the Tribunal.

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

- 34.2 The Tribunal may refuse to admit any evidence that is not relevant or that is not of a nature likely to further the interests of justice.
- 34.3 The Tribunal must take judicial notice of Kahnawà:ke laws and regulations. Any other law or regulation relied upon by the parties must be proven unless the Tribunal indicates that they will take judicial notice of said law and regulations.

The Tribunal may also take judicial notice of facts that are generally recognized and opinions and information which fall within its area of specialization.

- 34.4 Before taking judicial notice, the Tribunal will provide the parties with the opportunity to refute such other applicable laws, regulations, facts or opinions.

34.5 When a visit of the premises is ordered, the Tribunal will determine the rules applicable to the visit.

35. WITNESSES

35.1 Except as provided for under articles 35.3 and 35.4, a person called to testify will solemnly affirm to tell the truth prior to giving their testimony. The person will then state their name, address, and occupation.

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

35.3 A person under fourteen years of age will not make a solemn affirmation. Their testimony will be received only if they are able to understand and respond to questions. The Tribunal will require them to promise to tell the truth.

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

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

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

35.5 In the application of articles 35.3 and 35.4, no such proposed witness will be asked questions regarding their understanding of the nature of the promise to tell the truth for the purpose of determining whether their evidence will be received by the Tribunal.

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

35.7 Where the services of an interpreter are needed for a hearing, the interpreter must solemnly affirm that the translation will be accurate.

35.8 The Tribunal may order the exclusion of witnesses.

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

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

35.10 Any person who:

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

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

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

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

36. TECHNOLOGICAL MEANS

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

37. ADJOURNMENT

- 37.1 The Tribunal may adjourn the hearing for the purpose of fostering an amicable settlement, or for any other reason it determines, if it believes the adjournment will not cause unreasonable delay in the proceeding or a denial of justice.

38. PUBLIC HEARING

- 38.1 Hearings will be open to the public except when they are private hearings pursuant to article 40 of this regulation. However, in exceptional circumstances, access to hearings may be restricted or may be provided through virtual platforms.

39. PUBLICATION BAN

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

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

40. PRIVATE HEARINGS

- 40.1 The Tribunal may, on an application of a party or on its own initiative, order hearings or a part thereof to be held in private where necessary to maintain public order or confidentiality. When a hearing or part thereof is held in private the respective minutes will be confidential.
- 40.2 A journalist who proves their status will be admitted to any hearing held in private. However, the Tribunal can deny access if it determines that the presence of the journalist may be harmful to a person's interests or to the interests of justice.

The Tribunal will instruct the journalist throughout the hearing as to the information that may not be published or broadcasted.

41. MINUTES

- 41.1 Minutes will be prepared by the clerk in the form established by Justice Services. Minutes will contain the following information:
- 1) the date and time of the beginning and end of the hearing, and where it takes place;
 - 2) the name(s) of the Decision-maker(s) in attendance;

- 3) the names and addresses of the parties and, where applicable, those of their representatives and witnesses;
 - 4) the name and address of any stenographer;
 - 5) the name and address of any interpreter;
 - 6) the type of hearing;
 - 7) the exhibits filed;
 - 8) any admissions made by the parties;
 - 9) incidental proceedings and objections;
 - 10) the date on which an act or action must be carried out;
 - 11) all orders and decisions made by the Tribunal, indicating the names of the Decision-makers who supported the decision, opposed the decision or abstained;
 - 12) a summary of the discussion during the hearing; and
 - 13) the date on which the matter is taken under advisement.
- 41.2 In addition, where the Tribunal ordered a publication ban or the hearing is private pursuant to articles 39 and 40 respectively, the minutes will contain the following information, as applicable:
- 1) a publication ban was ordered and the nature of the publication ban;
 - 2) the hearing was private;
 - 3) the Tribunal denied access to a journalist and the reasons for denying access;
 - 4) where a journalist was granted access, any instructions as to information that may not be published and broadcasted; and
 - 5) the minutes are confidential.
- 41.3 A copy of the minutes will be maintained by Justice Services.

42. RECORDING OF HEARING

- 42.1 Justice Services will record hearings in a manner that ensures the accurate reproduction of the proceedings and may include stenographic notes, video recording or audio recording.
- 42.2 No other recording devices will be permitted to be used at a hearing.
- 42.3 In no case may images be recorded, nor may all or part of a video or audio recording be broadcasted.

43. REPLACEMENT OF DECISION-MAKER

- 43.1 Where a Decision-maker is unable to continue a hearing or unable to render a decision, another Decision-maker selected by the Lead Decision-maker will continue the hearing.

- 43.2 In the case of oral evidence already produced, the replacement Decision-maker may rely on the notes and minutes of the hearing or on the stenographer's notes or the recording of the hearing.

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

44. DECORUM

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

SECTION IV - RECUSATION

45. GENERAL

- 45.1 Decision-makers must consider and actively inquire into any circumstances that might give rise to a potential conflict of interest or grounds for a reasonable apprehension of bias, as defined in the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*.
- 45.2 Once a potential conflict of interest or grounds for a reasonable apprehension of bias is identified, the Decision-maker must immediately take the appropriate steps as set forth in this regulation.
- 45.3 No Decision-maker will recuse themselves from hearing a matter unless there is a direct conflict of interest.
- 45.4 The Lead Decision-maker will not re-assign a case unless there is a potential conflict of interest or grounds for a reasonable apprehension of bias that would bring the administration of justice into disrepute.

46. CONFLICT OF INTEREST

- 46.1 A Decision-maker must immediately inform the Lead Decision-maker if they are in a conflict of interest as defined in the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*. The Lead Decision-maker will re-assign the file.
- 46.2 If the Lead Decision-maker is in a conflict of interest they will immediately inform the Commissioner of Justice who will then re-assign the file.

47. POTENTIAL CONFLICT OF INTEREST OR REASONABLE APPREHENSION OF BIAS RAISED BY DECISION-MAKER PRIOR TO COMMENCING HEARING

- 47.1 A Decision-maker must immediately inform the Lead Decision-maker if they become aware, prior to commencing a hearing, that circumstances exist that:
- 1) gives rise to a potential conflict of interest on the part of the Decision-maker; or
 - 2) may be grounds for a reasonable apprehension of bias.
- 47.2 The Decision-maker will discuss the potential conflict of interest or grounds for reasonable apprehension of bias with the Lead Decision-maker. The Lead Decision-maker will either re-assign the file or direct the Decision-maker to discuss the matter with the parties to see if there are any objections with them hearing the case.

If there are no objections, the Decision-maker will proceed with hearing the case.

If there is an objection, the Lead Decision-maker will re-assign the file in accordance with article 43.1 of this regulation.

- 47.3 The Lead Decision-maker will record the basis for the potential conflict of interest or grounds for a reasonable apprehension of bias.
- 47.4 A Lead Decision-maker must immediately inform the Commissioner of Justice if they become aware, prior to commencing a hearing, that circumstances exist that:
- 1) gives rise to a potential conflict of interest on the part of the Lead Decision-maker; or
 - 2) may be grounds for a reasonable apprehension of bias.
- 47.5 The Commissioner of Justice will refer the matter to the other Decision-maker(s) who will discuss the potential conflict of interest or grounds for reasonable apprehension of bias.

The other Decision-makers will either:

- 1) re-assign the file; or
- 2) request that the Lead Decision-maker discuss the matter with the parties to see if there are any objections with the Lead Decision-maker hearing the case.

48. POTENTIAL CONFLICT OF INTEREST OR REASONABLE APPREHENSION OF BIAS RAISED BY A PARTY DURING A HEARING

- 48.1 When an allegation of a potential conflict of interest or reasonable apprehension of bias is raised by a party during a hearing, the Decision-maker will address the allegations in writing.
- 48.2 If the Decision-maker does not recuse themselves, the party may, if they still believe there exists a potential conflict of interest or grounds for a reasonable apprehension of bias, submit an incidental petition to the Lead Decision-maker who will inquire into the matter and will render a decision at the earliest available opportunity. The Lead Decision-maker's decision will be final and without appeal.

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

- 48.3 When the allegations are made against the Lead Decision-maker, the incidental petition will be heard by another Decision-maker selected by the Commissioner of Justice.

49. POTENTIAL CONFLICT OF INTEREST OR REASONABLE APPREHENSION OF BIAS RAISED BY A DECISION-MAKER DURING A HEARING

- 49.1 When a Decision-maker becomes aware during a hearing of a potential conflict of interest, or of facts that are grounds for a reasonable apprehension of bias, they will discuss the matter with the parties.
- 49.2 The parties may, after hearing the Decision-maker, waive or invoke their right to request the recusal of the Decision-maker. If both parties waive their right, the Decision-maker will

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

The Decision-maker must immediately inform the Lead Decision-maker of the waiver or recusal. In the event of recusal the Lead Decision-Maker will re-assign the file in accordance with article 43.1 of this regulation.

In the event that it is the Lead Decision-maker who is adjudicating the hearing at issue, they must immediately inform the Commissioner of Justice of the waiver or recusal. In the event of recusal the Commissioner of Justice will re-assign the file in accordance with article 43.1 of this regulation.

50. POTENTIAL CONFLICT OF INTEREST OR REASONABLE APPREHENSION OF BIAS OF LEAD DECISION-MAKER IN THEIR ADMINISTRATIVE ROLE

50.1 If, in the context of their administrative role, the Lead Decision-maker determines that they are in a potential conflict of interest or there is a reasonable apprehension of bias, the Lead Decision-maker must request that the clerk direct all communications regarding the matter to another Decision-maker designated by the Commissioner of Justice.

The file will be marked “No Access to Lead Decision-maker.”

50.2 All decisions regarding the choice of panel, scheduling and the release of the decision will be made by the Decision-maker designated by the Commissioner of Justice without the participation of the Lead Decision-maker.

SECTION IV - DECISIONS BY TRIBUNAL

51. GENERAL

51.1 Decision-makers will render decisions on the merits of a case, based on the law and admissible evidence presented during the proceeding.

51.2 Decision-makers will apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval from any person or institution must not deter a Decision-maker from making the decision they believe is correct based on the law and admissible evidence.

51.3 Every decision rendered by the Tribunal must be communicated in clear and concise terms to the parties and to every other person who has an interest in the outcome.

Every decision terminating a matter, even a decision communicated orally to the parties, must be in writing together with the reasons on which it is based.

51.4 The Tribunal may not decide a matter if the parties have not been heard or summoned.

It is exempted from this requirement when granting an uncontested petition or incidental petition. The Tribunal is also exempted if all the parties consent to proceeding on the basis of the record, subject to the power of the Tribunal to summon the parties to hear them.

In addition, the Tribunal may proceed and make a decision where a party has been summoned:

- 1) does not appear at the time fixed for the hearing without having provided a valid excuse for their absence, or

2) appears at the hearing but refuses to participate.

51.4 Any order made by the Tribunal during a proceeding for a hearing:

1) to be held *in camera*, or

2) to be subject to a publication ban

will be stated expressly in the decision.

52. DECISION BY PANEL

52.1 When a matter is heard by a panel pursuant to article 7.4 of the *Kahnawà:ke Justice Act*, the principle of consensus will govern decisions of the Tribunal.

52.2 The decision-making process will be as follows:

1) The matter will be brought forward by a Decision-maker;

2) Following discussion, the Decision-makers will each provide their views and attempt to reach a consensus decision;

3) If consensus has been reached, the matter will be considered decided; and

4) If consensus cannot be reached, the matter will be decided by a simple majority.

If any Decision-maker dissents, their dissenting opinion must be recorded in the decision.

52.2 A matter heard by a Decision-maker as part of a panel and which has not been decided at the time the Decision-maker ceases to hold office is governed by the rules set forth in article 43.1.

53. TIMEFRAME FOR FINAL DECISION

53.1 A final decision must be rendered within ninety (90) days after being taken under advisement. However, the Lead Decision-maker may grant an extension for a valid reason.

53.2 Where a Decision-maker or panel of Decision-makers fails to render a decision within ninety (90) days or, as the case may be, within such additional time as has been granted, the Lead Decision-maker may:

1) impose corrective or remedial measures in accordance with the *Policy on Corrective & Remedial Measures for Decision-makers Appointed to the Administrative Tribunal*; or

2) institute disciplinary measures against the Decision-maker or panel in accordance with the *Regulation Disciplinary Measures for Decision-makers Appointed to the Administrative Tribunal*.”

Before granting an extension or instituting disciplinary measures, the Lead Decision-maker will take into account the circumstances and interests of the parties.

54. INABILITY TO SIGN

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

55. DISTRIBUTION OF DECISION

55.1 A copy of the decision will be sent to all parties, their representatives and to any other person specified by law.

55.2 A copy of the reasons for decision must also be filed at the offices of Justice Services.

56. PUBLICATION OF DECISION

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

57. CORRECTION

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

Where the Decision-maker is unable to act or has ceased to hold office, the Lead Decision-maker will correct the decision or designate another Decision-maker to do so.

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

58. EXECUTION OF DECISION

58.1 A party may, by motion, apply to the Court of Kahnawà:ke for the recognition of a decision or an order of the Tribunal. Once recognized, the decision has the same force and effect as a judgement of the Court of Kahnawà:ke.

58.2 Any person who contravenes a decision or an order which is executory is guilty of contempt.

59. REVIEW OR REVOCATION OF DECISION

59.1 The Tribunal, on a petition, may review or revoke any final decision it has made:

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

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

59.2 A petition for review or revocation of a final decision is brought before the Tribunal by filing it at the office of Justice Services within thirty days (30) of the decision concerned or within

thirty days (30) following the date of discovery of a new fact susceptible of warranting a different decision. The petition will refer to the decision concerned, state the grounds invoked to support it and include all the information required by article 10.4 of this regulation.

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

59.3 The clerk will send a copy of the petition to the other parties, who may respond to it in writing within thirty days (30) days after receiving it.

59.4 The Tribunal will proceed on the basis of the record. However, it may hear the parties if it considers it appropriate or if a party requests it.

60. APPEAL

60.1 Except where the enabling law or its regulations provide for an appeal, final decisions of the Tribunal are without appeal.

61. JUDICIAL REVIEW

61.1 Final decisions of the Tribunal are subject to judicial review by the Court of Kahnawà:ke.

62. RETRIEVAL

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

SECTION V - FINAL

63. COMING INTO FORCE

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

64. AMENDMENT

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

65. TRANSITIONAL PROVISIONS

65.1 All requests for review submitted to the Community Review Board pursuant to the *Kanien'kehá:ka of Kahnawà:ke Law* and the *Kahnawà:ke Residency Law* that have not yet been forwarded to the Community Review Board at the time the Tribunal becomes operational will be considered petitions for the purposes of this regulation.

65.2 The Tribunal will request from the parties any information required by article 10.4 of this regulation that is missing from the request for review.