

Regulation Respecting the Community Review Board
K.R.L c. R-3, r-2

This Regulation was enacted pursuant to section 21.1 of the *Kahnawà:ke Residency Law* (the “Law”) and approved by the Mohawk Council of Kahnawà:ke by MCED #20/2020-2021 on 8 Ohiarikhó:wa/July 2020.

1. DEFINITIONS

1.1 Terms used in this Regulation have the same definition as they are used in the *Kahnawà:ke Residency Law*.

1.2 “Law” means the *Kahnawà:ke Residency Law*.

2. COMPOSITION OF THE COMMUNITY REVIEW BOARD

2.1 The Community Review Board (“CRB”) will consist of five (5) people (“CRB Members”) selected in accordance with the procedures of the *CRB Regulations*, at least two (2) of whom must have legal training.

2.2 To serve as a Member of the CRB a person must:

- a. be at least 18 years old;
- b. be on the Kanien'kehá:ka of Kahnawà:ke Registry;
- c. be ordinarily resident in Kahnawà:ke;
- d. pass a background check, and;
- e. be in good standing with professional order, if applicable.

2.3 For the purposes of the *CRB Regulations*, legal training means having completed an undergraduate degree in law at a recognized North American university.

2.4 If there are not enough legally trained members who meet the criteria in section 2.2 b, and c, the legally trained positions may be filled by the following people who have legal training, giving priority to this order:

- a. a person on the Kanien'kehá:ka of Kahnawà:ke Registry who is not ordinarily resident in Kahnawà:ke;
- b. a person who is a member of another First Nation;
- c. a person who is not a member of a First Nation but who has experience working with First Nations.

2.5 Each CRB Member will hold office until the earliest of the following:

- a. the end of a three (3) year term;
- b. they resign;
- c. they, for any reason, are unable to perform their duties under the Law or the *CRB Regulations*;
- d. they are removed in accordance with section 13 of the *CRB Regulations*; or
- e. upon the dissolution of the CRB once the Administrative Tribunal is operational.

2.6 The CRB will be dissolved and all Members will cease to hold office once the Administrative Tribunal, under the *Kahnawà:ke Justice Act*, is operational. A review instituted immediately before the Administrative Tribunal is operational will be continued by the CRB and the CRB Members will continue to hold jurisdiction to complete said review.

3. NOTICE

3.1. Following the enactment of the Law or a vacancy, the Kahnawà:ke Justice Commission (“Commission”) will issue a notice inviting interested persons to submit applications to serve on the CRB.

- 3.2. The notice will be posted in print and electronic media and must include the following:
- a. eligibility requirements;
 - b. a description of the purpose and duties of the CRB;
 - c. the length of the term of office;
 - d. where an application form and terms of reference can be obtained and submitted;
 - e. the deadline for application;
 - f. the details of remuneration;
 - g. the number of vacancies to be filled,
 - h. the requirement to provide a letter of intent, two (2) professional letters of reference, and proof of legal training (if applicable); and
 - i. whether the vacancy is that of one of the legally trained CRB Members.
- 3.3. The notice will be posted for thirty (30) days.
- 3.4. An application form will only be considered complete if all sections have been completed. This includes the applicant's confirmation of willingness to take an Oath of Office, to sign a Confidentiality Agreement and to abide by the CRB Code of Conduct and Conflict of Interest Policy.
- 3.5. A representative of MCK Justice Services will confirm the date on which an application is received by date stamping the original and providing the applicant with a copy of the date stamped application.

4. SECOND NOTICE

- 4.1 The Commission will issue a second notice if the total number of applicants is less than CRB vacancies.
- 4.2. In the event that the Commission issues a second notice, it will do so in accordance with sections 3.1-3.5.

5. NOMINATION(S) BY THE MOHAWK COUNCIL OF KAHNAWÀ:KE

- 5.1 If, after one repetition of the notice and application process, it is deemed by the Commission that it cannot, in the best interests of the Law appoint any of the applicants a CRB member or there is an insufficient number of successful applications for establishing quorum, the Mohawk Council of Kahnawà:ke must nominate as many people as are necessary to fill the vacancies on the CRB.
- 5.2 The nominees must consent to the nomination and will only become a CRB Member if he or she is selected in accordance with the verification and evaluation process set out in sections 6-11 of the *CRB Regulation*.
- 5.3 The nominee has five (5) business days to accept the nomination by informing the Commission of his or her intention; if he or she has not accepted the nomination within the five (5) days the nomination will be void.
- 5.4 Within five (5) business days of accepting a nomination, the nominee must complete the application form and submit it to the Commission.

6. VERIFICATION

- 6.1. The Chairperson of the Commission ("Chairperson") will forward the list of applicants to the Commission.
- 6.2. The Chairperson, with the assistance of staff of MCK Justice Services, will confirm whether the eligibility requirements listed at section 2.2 and 2.4 are met by the applicants. The Chairperson will forward the verification results to the Commission.
- 6.3. The Chairperson, on behalf of the Commission, will summarily reject any applicant(s) failing to meet any of the eligibility requirements listed at sections 2.2 or 2.4 of the present procedure, as the case may be. The unsuccessful applicant(s) will be advised of the decision.

6.4. Within ten (10) business days of the expiration of the thirty (30) day notice period or in the case of a MCK nominee within ten (10) business days of the submission of the completed application form, the Chairperson must inform all applicants in writing as to the results of the verification process.

7. EVALUATION COMMITTEE

7.1 The Commission will mandate a three (3) person Evaluation Committee to evaluate the remaining applicants. It will determine which applicants are most qualified and capable to review decisions of the Registrar and/or Compliance Officer in accordance with the Law.

7.2. The Evaluation Committee will be composed of:

- a. The Chairperson;
- b. One (1) non-voting member of the Commission or a member of MCK Justice Services;
- c. One (1) other individual with educational and/or work experience in hiring practices.

8. EVALUATION CRITERIA

8.1. The Evaluation Committee will take into account the following criteria when assessing an applicant's aptitude for membership on the CRB:

- a. Personal and intellectual qualities;
- b. Written and oral communication skills;
- c. Critical thinking skills;
- d. Ability to synthesize large amounts of complex information;
- e. Experience, knowledge and skills in relation to the duties of the CRB;
- f. Ability to carry out adjudicative functions;
- g. Judgment, open-mindedness, perceptiveness, level-headedness, decision-making and expressive abilities, and;
- h. The applicant's conception of the duties of a CRB Member.

9. INTERVIEW OF APPLICANTS

9.1. The Evaluation Committee will ask questions and may administer a skills evaluation test and/or assessment tool for the purposes of assessing an applicant's suitability for membership on the CRB.

9.2. The Evaluation Committee will draft and finalize the set of questions and any skills evaluation test and/or assessment tool in preparation for the interview.

10. REVIEW OF APPLICANTS

10.1. The Evaluation Committee will determine, taking into account the applicant's file as a whole (including interview results and results from any skills evaluation test and/or assessment tool that may be administered), which applicants are most qualified and capable to review decisions of the Registrar and/or Compliance Officer in accordance with the Law.

10.2. The Evaluation Committee will determine, taking into account the applicant's file as a whole, which applicants are most qualified and capable to review decisions of the Registrar and/or Compliance Officer in accordance with the Law.

11. RECOMMENDATION

11.1. The Evaluation Committee will recommend to the Commission the applicants that it has determined are most qualified and capable of reviewing decisions of the Registrar and/or Compliance Officer in accordance with the Law. It will also provide any comments, feedback or information that it considers important to highlight, including the final ratings attributed to each applicant.

11.2. The Commission will review the recommendations submitted by the Evaluation Committee and determine whether or not to approve the recommendation(s). The Commission, based on the comments, feedback or information provided, will make the final decision as to who will be appointed as a CRB Member.

12. APPOINTMENT

12.1 Successful applicants will be appointed by resolution of the Commission.

13. RESIGNATION, REMOVAL, OR SUSPENSION OF COMMUNITY REVIEW BOARD MEMBERS

13.1 A CRB Member may resign at any time by providing written notice to the Commission and the CRB.

13.2 A CRB Member may be removed if:

- a. he or she no longer meets the criteria in sections 2.2 of this Regulation;
- b. he or she is a legally trained member and no longer meets the criteria of sections 2.3 or 2.4; or
- c. there is a serious breach of the CRB Code of Conduct, the CRB Conflict of Interest Policy or the Confidentiality Agreement.

13.3 A CRB Member may be suspended if there is a minor breach of the CRB Code of Conduct or any other applicable law or regulation.

13.4 All complaints with respect to section 13.2(c) and 13.3 must be made in writing to MCK Justice Services which will ensure that an investigation will be completed if there is a serious issue.

13.5 MCK Justice Services will ensure that there is a written response as to whether there will be an investigation within ten (10) business days of receiving the complaint.

13.6 The decision to investigate is final.

13.7 If an investigation is to be undertaken, the Member in question must be advised of the complaint and be informed that he or she will have a chance to submit information to the ad hoc commission.

13.8 While an investigation is under way, the Member in question cannot participate in any CRB meetings or hearings.

13.9 A CRB Member may only be removed from office or otherwise sanctioned for their conduct after a full and impartial investigation conducted by an ad-hoc commission in accordance with the rules in section 8.

13.10 Within ten (10) business days of the removal or resignation of a CRB member, the Commission must begin the process, under section 3, for filing the vacancy.

14. AD HOC COMMISSION AND THE INVESTIGATION PROCESS

14.1 When an investigation is required pursuant to sections 7.1 and 7.2 the Commission will appoint three (3) people to the ad hoc commission to investigate and decide on whether the Member should be removed or suspended from the CRB.

14.2 The ad hoc commission must be comprised of :

- a. One person who is legally trained as defined in section 2.3; and
- b. Two people who meet the criteria in section 2.2.

14.3 All three (3) ad hoc committee members must be present at all meetings and must vote on every decision.

- 14.4 Prior to making a final decision regarding the CRB Member, the ad hoc committee must allow the Member to respond to the complaint.
- 14.5 A decision on whether or not the CRB Member is to be removed or suspended from the CRB will be by majority vote of the ad hoc committee.
- 14.6 The complainant and the CRB Member must be notified of the reasons for decision in writing and a copy of the reasons for decision must be filed at the Court of Kahnawà:ke.
- 14.7 MCK Justice Services must publish a copy of the reasons for decision.
- 14.8 The decision of the ad hoc committee may be appealed to the Court of Kahnawà:ke within thirty (30) days of the decision.

15. COMMUNITY REVIEW BOARD MEETINGS

- 15.1 CRB meetings will be held as required.
- 15.2 CRB meetings are not public, only CRB Members can attend and all deliberations are to be confidential.
- 15.3 A representative of MCK Justice Services will contact all CRB Members at least forty-eight (48) hours before the meeting to inform them of the date, time and place of the meeting and a proposed agenda.

16. COMMUNITY REVIEW BOARD HEARINGS

- 16.1 CRB hearings will be held as required.
- 16.2 CRB hearings are open to all people listed on the Kanien'kehá:ka of Kahnawà:ke Registry.
- 16.3 MCK Justice Services must present a notice of hearing in the Kahnawà:ke print and electronic media five (5) business days prior to any hearing.
- 16.4 The CRB will inform the parties in writing of the date, time and place no less than two (2) weeks in advance of the hearing.
- 16.5 The CRB must conduct the hearing in keeping with the duty to act impartially, so as to ensure a fair process.
- 16.6 The CRB is required to give the parties the opportunity to be heard.
- 16.7 The hearings will be recorded in a manner that ensures the accuracy and faithful reproduction of the proceedings and may include stenographic notes or audio recording.

The CRB has full authority over the conduct of the hearing. The CRB shall, in conducting the proceedings, be flexible and ensure that the substantive law is rendered effective and is carried out.

- 16.8 MCK Justice Services will supply a court clerk or designate, who will be responsible to:
 - a. Coordinate hearings;
 - b. Attend the hearing in its entirety;
 - c. Record the entire hearing with a recording device;
 - d. Take notes at the hearing;
 - e. Prepare the minutes of the hearing, and;
 - f. Circulate the minutes of the hearing, within ten (10) business days of the hearing, to all the CRB Members who were present for their approval.

17. QUORUM

- 17.1 For the purpose of conducting a CRB meeting or hearing at least three (3) CRB Members must be in attendance to establish quorum, one of whom must have legal training.
- 17.2 A hearing may only proceed if the court clerk or designate is present
- 17.3 If quorum is not established within thirty (30) minutes of the scheduled time for a meeting or a hearing, the CRB members in attendance may direct the time and date for the next meeting or hearing but can make no other decisions.
- 17.4 If a next meeting or hearing is fixed by the CRB members, the rules in sections 9 and 10 must be followed with respect to notice.

18. CHAIRPERSON

- 18.1 The CRB members must appoint one member to serve as the chairperson who will preside over meetings and hearings.
- 18.2 If the chairperson is not in attendance, the CRB will appoint another member to serve as chairperson for that meeting or hearing.
- 18.3 The duties of the chairperson are to:
- a. maintain order and decorum at the meeting or hearing;
 - b. ensure the meeting or hearing is held in accordance with the provisions of the Law and the *CRB Regulation*;
 - c. recognize CRB members in the order in which they wish to speak;
 - d. recognize others in attendance for the purpose of addressing the CRB; and
 - e. set the agenda for meetings.
- 18.4 The chairperson must ensure that agenda, minutes, notices and other documents necessary for the functioning of the CRB are prepared and maintained in an orderly manner. The chairperson will ensure the delays for notification has been respected.

19. RECORDING DEVICE

- 19.1 Hearings are to be recorded using an audio recording device, and the CRB may allow for the recording of other proceeding (ie. Internal, administrative or Board meetings).
- 19.2 Audio recordings must only be used for the purpose of preparing accurate minutes of a hearing.
- 19.3 Audio recordings are available only to CRB Members, the recorder and the Court of Kahnawà:ke in the event of an appeal.
- 19.4 No other recording devices will be permitted at hearings or meetings.

20. MINUTES

- 20.1 The recorder must ensure that accurate written minutes of each hearing are kept.
- 20.2 Minutes must include:
- a. the time, date and place of the hearing;
 - b. the names of the CRB Members in attendance;
 - c. the names of other persons in attendance who address the CRB;
 - d. the various stages of the hearing;
 - e. the names of the lawyers and witnesses;
 - f. the exhibits filed;
 - g. any admissions; and
 - h. a summary of the discussion during the hearing, and;
 - i. all decisions made by the CRB, indicating the names of the CRB Members who supported the decision, opposed the decision and abstained.

20.3A copy of the minutes must be maintained at the Court of Kahnawà:ke.

21. ARCHIVES

21.1 MCK Justice Services must ensure that the following documents and related materials are maintained in a secure location:

- a. Regulations enacted under the Law;
- b. approved agendas;
- c. minutes of hearings;
- d. audio recordings of hearings;
- e. records of decisions, including those made by ad hoc committees, and;
- f. a list of CRB Members, including the date of his or her appointment and, if applicable the date on which a CRB Member resigned, ceased to perform his or her duties, or was removed;

21.2 All documents and related materials referred to in the preceding paragraph will be kept for a seven (7) year period and will not be destroyed or otherwise disposed of.

22. APPLICATION FOR REVIEW BEFORE THE COMMUNITY REVIEW BOARD

22.1 A review by the CRB is not a re-hearing of the evidence provided to the Registrar.

22.2. A decision by the Registrar and/or Compliance Officer can only be reviewed by the CRB if it is submitted that:

- a. due process was not followed;
- b. laws of natural justice were not respected;
- c. there is an allegation of bias;
- d. the decision is unreasonable;
- e. there was an absence of jurisdiction, or;
- f. there was a mistake of law.

22.3. To request a review, a person must fill out and submit an application to the Court of Kahnawà:ke within thirty (30) days of receiving the decision from the Registrar and/or Compliance Officer.

22.4. Upon receipt of the application, a representative of the Court of Kahnawà:ke will date stamp the original and provide the complainant with a date stamped copy.

22.5. The CRB must do a preliminary review of the application form and supporting documents and decide if there are grounds to review the decision.

22.6. Within fifteen (15) business days of receiving the application, the CRB must respond to the applicant in writing stating whether the CRB will review the Registrar's and/or Compliance Officer's decision.

22.7. If the CRB decides there are no grounds to review the decision, it must provide the applicant with reasons in the written response refusing the application.

22.8. If the CRB accepts the application, the written response must include information regarding the timeline and procedure for the review.

23. CONFLICT OF INTEREST

23.2. If at any time a CRB Member is or will likely be in a conflict of interest, as defined in the CRB Conflict of Interest Policy, the Member must inform the other CRB Members of the conflict and of his or her decision on whether or not he or she will recuse himself or herself from the review.

23.3. If at any time a CRB Member is aware of another Member who is or will likely be in a conflict of interest, as defined in the CRB Conflict of Interest Policy, the Member must call a vote on whether or not the Member should be removed from the review.

23.4. A quorum of CRB Members is required to decide by majority vote whether the Member is in an apparent or potential conflict of interest and whether he or she can participate in that review.

24. REVIEW BY THE COMMUNITY REVIEW BOARD OF A DECISION BY THE REGISTRAR AND/OR COMPLIANCE OFFICER

24.1 The CRB may, on a party's request, take any provisional measure or any measure to safeguard the parties' rights for the time and subject to the conditions the CRB determines. Such a decision is binding on the parties but one of them may, if necessary, ask the Court to ratify the decision to give it the same force and effect as a judgment of the Court of Kahnawà:ke.

24.2 In an urgent situation, even before a request for a provisional or safeguard measure is notified to the other party, the CRB may issue a provisional order for a period which may in no case exceed 20 days.

24.3 The provisional order must be notified to the other party as soon as it is issued, with all the evidence attached. It is binding on the parties.

24.4 The CRB shall decide on the admissibility of evidence and means of proof and may, for that purpose, follow the ordinary rules of evidence applicable in civil matters. The CRB shall, however, even of their 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. The use of evidence obtained in violation of the right to professional secrecy is deemed to bring the administration of justice into disrepute.

24.5 Every decision rendered by the CRB must be communicated in clear and concise terms to the parties.

24.6 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.

24.7 The CRB must review the application form and supporting documents prior to making a final determination on the merits of the review.

24.8 The CRB may request relevant documents from either the Registrar, Compliance Officer or the person requesting the review.

24.9 The CRB may also request to interview a party or hold a hearing.

24.10 The CRB may quash, confirm or vary the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.

24.11 The CRB must render a written decision the merits within ninety (90) days of accepting the file for review.

25. COMMUNITY REVIEW BOARD DECISIONS

25.1 The principle of consensus will govern discussions and decisions of the CRB.

25.2 The decision-making process is as follows:

- a. the matter is to be brought forward by the chairperson;
- b. following the discussion each CRB Member will provide his or her views to determine if consensus has been reached;
- c. if consensus has been reached, the matter will be considered decided.

25.3 In the case that consensus cannot be reached, the matter must be decided by a simple majority.

25.4 A CRB decision is subject to appeal as set out in the Law.

26. RECORD OF DECISION

26.1 A written record of decision will be produced by the CRB.

26.2 A record of decision must include the following:

- a. the reason for the decision;
- b. the date and place of the meeting or hearing at which the decision was made;
- c. the names of all persons in attendance;
- d. the names of those CRB Members who approved or opposed, and;
- e. a place for the CRB Members who approved the decision to sign.

26.3 Once the record of decision on the merits of the review is signed by all the CRB Members who approved, a copy must be sent to the person who requested the review of the Registrar's and/or Compliance Officer's decision, the Registrar and MCK Justice Services.

26.4 Records of decision will be maintained by and must be made available for viewing at the Court of Kahnawà:ke.