

# MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW

K.R.L. c. E-1

[Enacted by MCR # 147/1989-1990 on 21 Onerahtohkó:wa/May 1990]  
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[Repealed and replaced by MCR # 1/2006-2007 on 26 Enniskó:wa/March 2007]  
[Repealed and replaced by MCR # 2/2008-2009 on 16 Enniskó:wa/March 2009]  
[Amended by will of the people MCR # 3/2014-2015 on 2 Enniskó:wa/March 2015]

## PREAMBLE

We are the Kanien'kehá:ka of Kahnawà:ke. We are a community within the Kanien'kehá:ka Nation and are Indigenous Peoples who possess a fundamental and inherent right of self-determination given to us by the Creator.

We have inherent, Aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples which includes the inherent right of self-government and jurisdiction over our lands, people and resources.

We have consistently and historically asserted both our rights as Indigenous Peoples and the rights set out in our treaties with foreign governments. These rights cannot be extinguished, diminished or affected without our consent.

As part of our inherent and Aboriginal right of self-government, we have the right to govern ourselves in relation to matters that are integral to our unique culture, identities, traditional, languages and institutions and with respect to our connection to our people, children, land and resources.

We have consistently and historically exercised the right to determine the rules for the selection of our political leadership.

This Law is an affirmation of our inherent, Aboriginal and Treaty rights to establish and maintain our own process to nominate and select the political representatives of the Kanien'kehá:ka of Kahnawà:ke.

**Comment [KF1]:** It is proposed that there be a preamble to this law, the purpose of which is for consistency with other recently created laws, to provide background and to set out the authority under which it is created.

This draft preamble is based on the preamble found in the *Kahnawà:ke Family Homes and Matrimonial Interests Law*.

## PART I - GENERALITIES

### 1. JURISDICTION

1.1 The jurisdiction under which this Law is enacted is more fully described in the Preamble.

1.2 This Law is an exercise of the collective rights of the Kanien'kehá:ka of Kahnawà:ke to determine the process for nominating and selecting the political representatives of the Kanien'kehá:ka of Kahnawà:ke. This Law is paramount to and supersedes the laws, regulations and policies of the governments of Canada and Quebec, or any other government, concerning this matter or matters related thereto.

### 2. PURPOSE

2.1 This Law is intended to provide the criteria and procedures for the nomination and selection of a twelve (12) member Council composed of eleven (11) Council Chiefs and one (1) Grand Chief.

### 3. SHORT TITLE

3.1 This Law may be cited as the "MCK Election Law".

### 4. DEFINITIONS

4.1 In this Law:

**CANDIDATE** : Means a person who has been duly nominated, has accepted their nomination, declared their candidacy ~~has declared their nomination~~ and who has been verified as eligible to hold the position of Grand Chief or Council Chief;

**COMMUNITY MEMBER** : Means a person who meets the membership criteria set out in the *Kahnawà:ke Membership Law*;

**COUNCIL** : Means the elected Chiefs of the Mohawk Council of Kahnawà:ke;

**CRIMINAL OFFENSE** : Includes indictable and felony offenses such as homicide, attempted homicide, sexual assault, rape, burglary, robbery, theft, aggravated assault, arson, embezzlement, illegal drug related offenses, fraud, breach of trust of any legally recognized jurisdiction. For greater certainty, the term "criminal offense" contained in subsection 15.(1)(h) includes any conviction for an indictable offense or three (3) summary conviction offenses committed within a period of five (5) years. In the case of

**Comment [KF2]:** Both individual provisions and headings in the MCK Election Law are termed "sections". To avoid confusion it is proposed that this law be organized into "Parts" with individual provisions continuing to be termed "sections". The Technical Drafting Committee may determine the most appropriate titles for these Parts.

**Comment [KF3]:** For purposes of consistency with other laws it is proposed that there be a "Jurisdiction" section in this law.

**Comment [KF4]:** For purposes of consistency with other laws it is proposed that there be a "Purpose" section in this law.

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**Comment [KF5]:** It is proposed that the definition of Candidate be clarified.

**Comment [KF6]:** There *may* not be a need for this term since, for the purposes of this law, a Community Member is essentially the same as an Elector.

**Comment [KF7]:** It is proposed that the definition of Council be clarified.

the latter, the six (6) year ban from holding office will commence after the last of the summary conviction offense sentence has been served in full. Criminal conviction for a tobacco charge (possession, manufacture or transport) will not be considered as a criminal offense for the purpose of this Law;

**ELECTION :** Means an election of the Council held pursuant to this Law, and includes the term "selection";

**ELECTION DAY :** Means the date set by the Electoral Officer on which the election is to be held; Means the day on which the election of the Council is held;

**ELECTOR :** Means an individual community member who meets the eligibility criteria set out in section 26.1 of this Law to vote in an Election; Council election;

**JUSTICE :** Means a Justice of the Peace of the Court of Kahnawà:ke;

**MEMBERSHIP REGISTRAR:** Means the individual appointed by Council to maintain and administer the Kahnawà:ke Kanien'kehá:ka Registry ,or designate;

**NOMINATION DAY :** Means the date set by the Electoral Officer on which nominations are received in accordance with the procedures in this Law;

**NOMINEE :** Means a person who has been nominated but not yet been verified as a candidate;

**NOMINATOR(S):** Means an Elector(s) who proposes a person for a position on Council community member who is an Elector, who meet the requirements of the Kahnawà:ke Membership Law and who is listed on the Kahnawà:ke Kanien'kehá:ka Registry.

**ORDINARILY RESIDENT :** Means having lived in Kahnawà:ke for not less than six (6) consecutive months prior to the election in question and includes persons who return to Kahnawà:ke on a regular basis from their place of employment, training or schooling as well as persons who does not reside in Kahnawà:ke due to housing shortages;

**POLLING LOCATION :** Means the physical location and property where the Election is held on Election Day;

**REGISTRAR :** Means the Membership Registrar appointed by the Council;

**VOTERS LIST :** Means the list of Electors prepared and maintained by the Membership Registrar;

**Comment [KF8]:** It is proposed, for ease of reference, that this clarification (currently located at section 15.2 of the current MCK Election Law) be included in the definition of Criminal Offense.

**Comment [KF9]:** It will be proposed that there be a predetermined Election Day. In light of this proposal, it is also being proposed that the definition of Election Day be amended to reflect that the Electoral Officer would no longer be setting the date on which the election will be held.

**Comment [KF10]:** It is proposed that the definition of Elector be clarified. The requirement to be a "community member" is already accounted for at section 26.1 of this draft law.

**Comment [KF11]:** The term "Election" is the defined term in this law to refer to the election.

**Comment [KF12]:** It is proposed that the definition of Membership Registrar replace the term "Registrar" and be broadened to include both the role of the Registrar and that a designate may act in place of the Membership Registrar (in case the Membership Registrar is unavailable then one of his/her staff can step in).

**Comment [KF13]:** It is proposed that the definition of Nominator(s) be clarified. The current definition does not actually define what a Nominator is, just the requirement to be one. This proposed definition is based on the definition of "Nominate" found in Black's Law Dictionary, 8<sup>th</sup> edition.

**Comment [KF14]:** It is proposed that there be a definition for the term Polling Location. The term is used several times in the law but is not defined.

## PART II - ADMINISTRATION OF ELECTION SECTION II

### 53. NOMINATIONS AND APPOINTMENT OF ELECTORAL OFFICER

5.13.1 — The Electoral Officer will be appointed by the Kahnawà:ke Justice Commission.

5.2 The Kahnawà:ke Justice Commission will issue a notice inviting interested persons to submit their candidacies for the position of Electoral Officer. This will take place not less than ninety (90) days prior to Election Day. The period during which submissions are received will be fourteen (14) days.

~~Nominations for the position of Electoral Officer will take place not less than ninety (90) days prior to the end of the incumbent Council's term of office. The period during which nominations are received will be fourteen (14) days.~~

53.32 The verification, screening and selection process for the position of Electoral Officer will be in accordance with procedures established by resolution of the Kahnawà:ke Justice Commission. Nominations for the position of Electoral Officer must be proposed and seconded by two Nominators.

53.42 Applicants ~~Nominees~~ must sign a Privacy Waiver for the purpose of verifying that they meet the eligibility criteria provided in this Law.

53.53 The Electoral Officer will be appointed by resolution of the Kahnawà:ke Justice Commission not less than sixty (60) days before Election Day. Not less than sixty (60) days before the incumbent Council's term of office expires, the community, at a special community meeting, will appoint an Electoral Officer to perform all duties pertaining to the election, as set out in this Law.

### 64. DUTIES OF ELECTORAL OFFICER

4.1 6.1 In addition to any other duties provided in this Law, in order to conduct the Election in a fair, transparent and accountable manner the Electoral Officer will:

- (a) Declare that a vote will be held on Election Day, establish the date of the next Council election, which will be not less than forty five (45) days prior to the date upon which the incumbent Council's term of office expires;
- (b) establish the date for nomination day, which will be at least thirty (30) days before the date set for Election Day; and conduct the nomination and verification process for candidates;
- (c) refuse to accept the nomination of any candidate who is not eligible to hold office or whose nomination does not comply with this Law;

**Comment [KF15]:** Due to concerns about the process currently used for the selection and appointment of the Electoral Officer (appointed by community after a vote) it is proposed that the Electoral Officer be an appointed position.

The Kahnawà:ke Justice Commission was identified as a potentially suitable body to appoint the Electoral Officer due to its autonomy. This matter requires further review. The input of the Kahnawà:ke Justice Commission will be required.

Several options were considered, including appointment by the Commissioner of Justice. The Elections Working Group will be available to discuss options with the Technical Drafting Committee.

Note that there are no proposed amendments to the timelines.

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**Comment [KF16]:** It is proposed that the responsibilities of the Electoral Officer be explicitly broadened to include the expectations of how his/her mandate is to be accomplished.

**Comment [KF17]:** It will not be necessary to "establish" the date of the next Election if there is a predetermined Election Day. However, it is proposed that the Electoral Officer still declare if there will be a vote held on Election Day. There is the (unlikely) possibility that no voting will be required due to acclamations.

**Comment [KF18]:** It is proposed that the responsibilities of the Electoral Officer be explicitly broadened to state the expectations of how his/her mandate is to be accomplished.

**Comment [KF19]:** It is proposed that the responsibilities of the Electoral Officer be explicitly broadened to state that he/she will conduct the nomination and verification process of candidates.

- (d) arrange for a meeting to be held at least five (5) days before Election Day, at which the Electors may hear the candidates speak;
- (e) ensure that an adequate supply of this Law is made available for the public at Council offices during the entire Electoral process up to and including the polling date;
- (f) conduct and supervise the election in accordance with this Law;
- (g) make any decision and take any reasonable measure that is required to apply this Law;
- (h) maintain and record in a log book all problematic events or issues, which occur, and decisions taken from the time he or she is appointed until the time of the official announcement of elected candidates.

4.2 6.2 An Electoral Officer is not entitled to vote in the election for which he or she has been appointed to act as Electoral Officer.

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4.3 6.3 Should the Electoral Officer fail to perform any duty established by this Law, or resigns prior to the election, the Kahnawà:ke Justice Commission will Council may appoint a person to replace the Electoral Officer.

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**Comment [KF20]:** See Comment KF15.

## 7. ASSISTANT ELECTORAL OFFICER AND POLLING CLERKS ELECTION SCRUTINEERS

**Comment [KF21]:** It is proposed that the term "Polling Clerks" replace "Election Scrutineers". The term "Polling Clerk" is recommended because of the clerical and administrative duties expected of them at the polling station. It is a more suitable title for the role that this position(s) will play during the election process. It would also avoid confusion with a candidate's representative, which is generally referred to as their "scrutineer".

5.47.1 The Electoral Officer will appoint for the duration of the election, an Assistant Electoral Officer, who shall not be the Electoral Officer's spouse or an immediate family member, and one or more Polling Clerks Election Scrutineers all of whom shall perform the duties assigned to them and as directed by the Electoral Officer.

5.27.2 Before they are appointed, the potential Assistant Electoral Officer and potential Election Scrutineers Polling Clerks must sign a Privacy Waiver for the purpose of verifying that they meet the eligibility criteria provided in this Law.

5.37.3 The An Assistant Electoral Officer and Polling Clerks Election Scrutineers are entitled to vote in the election for which they have been appointed.

5.47.4 The Assistant Electoral Officer will assist the Electoral Officer in all aspects of the election, as directed by the Electoral Officer.

5.57.5 Polling Clerks Election Scrutineers will perform the duties assigned to them by this Law, will assist the Electoral Officer in scrutinizing the processes and results of the vote and will perform such other duties as directed by the Electoral Officer.

## 8. ELIGIBILITY REQUIREMENTS

~~6.1~~ 8.1 The Electoral Officer, Assistant Electoral Officer and Polling Clerks: Election  
Scrutineers:

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- (a) must be over the age of twenty-one (21) years;
- (b) must meet the requirements of the *Kahnawà:ke Membership Law*, ~~and be listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry~~ and must not have had their benefits and entitlements as a member suspended;
- (c) must be ordinarily resident in Kahnawà:ke; and
- (d) must not have been, within the previous six (6) years, convicted and sentenced for a criminal offense. The six (6) year ban commences only after sentence has been served in full.

**Comment [KF22]:** It is proposed that there be a clarification that not only must an Electoral Officer, Assistant Electoral Officer or Polling Clerk be listed as a member on the KKR but that their benefits and entitlements as a member have not been suspended. This has been the expectation but it is not reflected in the content of the law.

~~6.2~~ 8.2 No person may be appointed to act in any capacity related to the election process who was a member of the Council at any time during the year immediately preceding the election or who is, or intends to be, a candidate in the election.

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## ~~97.~~ REMUNERATION AND BUDGET

~~9.17.1~~ The Electoral Officer, Assistant Electoral Officer and Polling Clerks ~~Scrutineers~~ are to be remunerated for duties performed.

~~9.27.2~~ An adequate budget will be allocated by the Executive Director's Office of the Mohawk Council of Kahnawà:ke. The budget to conduct Council elections will be established by Council's Executive Director. The budget must include adequate funding to conduct an election under this Law. The Electoral Officer is responsible for the management and accountability of these funds in accordance with Council's administration standards and the roles and responsibilities set forth in their contract.

**Comment [KF23]:** This proposed re-wording is for purposes of clarification.

**Comment [KF24]:** It is proposed that certain sections be re-ordered for the purposes of improving the chronology and flow of this law. There are several new provisions/amendments to existing provisions, but other than new placement in the law any revisions are minimal. This ordering primarily impacts sections 11, 14 and 15 of the current *MCK Election Law*.

For ease of reference, the sections numbers where provisions can be found in the in-force version of the *MCK Election Law* are included.

**Comment [KF25]:** This is adapted/modified from section 11.1 of the current *MCK Election Law*.

**Comment [KF26]:** It is proposed that there be a predetermined Election Day, the purpose of which is to provide certainty to the community as to when a vote will be held, assist with planning and to prepare for any transitions that may be necessary.

**Comment [KF27]:** This is found at section 12.10 of the current *MCK Election Law*.

## PART III - ELECTIONS

### 10. GENERAL

10.1 There will be an Election held every three (3) years for the Mohawk Council of Kahnawà:ke, which is a twelve (12) member Council composed of eleven (11) Council Chiefs and one (1) Grand Chief.

10.2 Election Day will be held on the first Saturday in the month of July, beginning in 2018.

10.3 The positions of Grand Chief and Council Chiefs are filled by the candidates receiving the highest number of votes.

## 11. TERMS OF OFFICE

11.1 The term of office of the Grand Chief and each Council Chief will be three (3) years.  
[amended MCR #11/2005-2006]

**Comment [KF28]:** This is found at section 14.1 of the current *MCK Election Law*.

11.2 There is no limitation on the number of terms of office a Grand Chief or Council Chief may serve.

**Comment [KF29]:** This is found at section 14.2 of the current *MCK Election Law*.

## 12. WHO CAN HOLD OFFICE

**Comment [KF30]:** This is found at section 15 of the current *MCK Election Law*. Any recommended amendments to the content is in **bold** and explained in comment boxes.

12.1 To be eligible to hold the office of Grand Chief or Council Chief, a person:

(a) must meet the requirements of the *Kahnawà:ke Membership Law*, be listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry **and must not have had their benefits and entitlements as a member suspended;**

**Comment [KF31]:** It is proposed that there be a clarification that not only must a candidate be listed as a member on the KKR but that their benefits and entitlements as a member have not been suspended. This has been the expectation but it is not reflected in the content of the law.

(b) must be fifty (50 %) percent or more Kanien'kehá:ka Blood quantum;

(c) must be Kanien'kehá:ka of Kahnawà:ke and not of any other Kanien'kehá:ka community;

(d) must not be married to or living common-law with a non-Native person;

(e) must be a minimum of twenty-one (21) years of age;

(f) must be ordinarily resident

(g) must declare all their private business holdings **the purpose of which is to verify conflicts of interest if elected and/or respond to public inquiry of Chiefs;**

**Comment [KF32]:** It remains unclear as to what the purpose of this eligibility requirement is. Why would business holdings have to be declared? It is to gather information to share with voters? For the purposes of determining conflicts of interest? This is a matter that requires confirmation by the community. In the interim, as a placeholder, note the amended language stating that the purpose is to verify conflicts of interest if elected and/or respond to public inquiry of Chiefs .

(h) must not have been, within the previous six (6) years, convicted and sentenced for a criminal offense. The six (6) year ban commences only after sentence has been served in full;

(i) if he or she has previously served on Council in the term immediately before the current election, he or she must not have been removed from office; and

(j) must be willing to submit to and then pass a test for illegal drugs, after being elected to the position of Grand Chief or Council Chief.



### 8. 13. NOMINATION PROCEDURE

8.13.1 The Electoral Officer will set the date of Nomination Day, ~~nomination day~~, which will be not less than thirty (30) days before the date set for Election Day.

8.213.2 Not less than seven (7) days before Nomination Day, ~~nomination day~~, the Electoral Officer will post a notice of a date, time and place for the purpose of nominating candidates for election. The notice will indicate the procedures for nominating candidates, as provided in this Law.

8.313.3 Nominations of candidates will be held between the hours of ten and twelve in the morning (10:00 a.m. to 12:00 noon) on Nomination Day. ~~nomination day~~. Nominations will not be accepted after the close of the nomination period.

8.413.4 Any two (2) Nominators may nominate and second any person eligible to hold office, as a candidate for the office of Grand Chief or Council Chief. An Elector can participate in a maximum of two (2) nominations. For further clarity, an Elector may nominate one (1) individual for the position of Grand Chief or Council Chief and/or second a nomination for (1) individual for the position of Council Chief but cannot second and nominate for the same position.

8.513.5 In order to be valid a nomination must be made on the Nomination Form prescribed by regulation and duly completed by the Nominators nominating and seconding the candidate and submitted to the Electoral Officer before the close of the nomination period. Upon receipt, the Electoral Officer will sign the Nomination Form acknowledging receipt and will provide copies to the persons submitting the form.

8.613.6 A second nomination, if any, must be presented by two (2) other Nominators.

8.713.7 Each Nominator can only nominate one (1) person and second one (1) person's nomination.

8.813.8 A person may be nominated for Grand Chief, Council Chief, ~~Grand Chief~~ or both.

8.913.9 A candidate can only run for one (1) position and must clearly indicate for which position they intend to run in their declaration of candidacy.

8.1013.10 ~~At~~ After twelve noon (12:00 noon) on nomination day, the Electoral Officer will announce the names of all nominees without unreasonable delay and will provide a copy of this Law to each nominee.

8.1113.11 The announcement of the names of nominees by the Electoral Officer at the close of the nomination period does not qualify any particular nominee as a candidate. Each nomination is subject to the verification procedure set out in this Law.

**Comment [KF33]:** According to the drafting instructions prepared by Trina C. Diabo (dated October 2, 2014) that was used for the 2015 amendments to this law, at "the onset of the CDMP, the community members articulated that the election procedures such as Nominations, Polling and Appeals need to be separated from the Law, and create Regulations. The community chose not to deal/discuss in detail the regulatory portions of the Law, and gave that mandate to the drafters to separate."

A detailed review was undertaken to determine which sections could be separated from the law and transferred into a regulation. However, it was observed that any major separation would likely result in a law and regulation that would be disjointed and difficult to apply. The origin of this law is regulatory, which makes it problematic to separate "procedures" since it is procedural in nature.

Fulfilling the community member's request and resolving the issues stemming from such a separation would require a major reform to the law, of which there is insufficient time to complete before the end of 2017/early 2018 (when it is hoped that this law will have completed the CDMP for amendments).

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**Comment [KF34]:** Capitalization of term that has been defined in the law.

**Comment [KF35]:** It is proposed that it be clarified how many times a person can nominate and/or second an individual for the office of Grand Chief or Council Chief.

**Comment [KF36]:** It is proposed that this provision be amended to reflect that it may not always be possible to announce the names at twelve noon exactly due to various administrative tasks that must first be completed. Note that the unofficial list of nominees in 2015 was announced shortly after 12:30 pm.



**914. VERIFICATION PROCEDURE**

**9.414.1** Within three (3) days of the close of the nomination period, each nominee must duly complete and submit to the Electoral Officer each of the following statements, the form of which will be prescribed by regulation:

- (a) Declaration of Candidacy; in the form attached as Schedule "B" to this Law;
- (b) Declaration of Eligibility; in the form attached as Schedule "C" to this Law;
- (c) Declaration of Criminal Offence Charge Pending; in the form attached as Schedule "D" to this Law;
- (d) Declaration of Business Holdings; and in the form attached as Schedule "E" to this Law
- (e) Privacy Waiver; in the form attached as Schedule "F" to this Law;

failing which the nomination becomes null and void.

**9.214.2** The Privacy Waiver provided by each nominee is for the sole purpose of authorizing the Electoral Officer to conduct such inquiries and obtain such information (the "verification information") as is required to verify the nominee's eligibility to hold the office of Grand Chief or Council Chief. The Electoral Officer will hold the verification information in the strictest confidence and will not copy the information or provide it to any person other than the nominee, at his or her request.

**9.314.3** Following the close of the nomination period, the Electoral Officer will review each nomination to verify whether the nomination is valid and whether the nominee meets the criteria for persons eligible to hold the office of Grand Chief or Council Chief, as set out in this Law.

**9.414.4** Within seven (7) days after the close of the nomination period, the Electoral Officer will contact each nominee to advise whether their nomination has been accepted or refused.

**9.514.5** The acceptance of a nomination by the Electoral Officer qualifies the nominee as a candidate in the election.

**9.614.6** The Electoral Officer may refuse a nomination:

- (a) that has been improperly filed;
- (b) that is inaccurate, misleading or incomplete;
- (c) that is otherwise invalid.

**Comment [KF37]:** It is proposed that the form and content of these declarations no longer comprise a schedule to the Law but be established by regulation. Transfer of the form and content of these declarations from the law to a regulation would enable quicker amendments should modifications be required from election to election. Presently, any official revision to the form and content of these declarations would require an amendment of the law.

**Comment [KF38]:** There will still be a requirement for a nominee to complete and submit this document, but the form itself will be established by regulation. See Comment KF 37 for more information.

**Comment [KF39]:** There will still be a requirement for a nominee to complete and submit this document, but the form itself will be established by regulation. See Comment KF 37 for more information.

**Comment [KF40]:** There will still be a requirement for a nominee to complete and submit this document, but the form itself will be established by regulation. See Comment KF 37 for more information.

**Comment [KF41]:** There will still be a requirement for a nominee to complete and submit this document, but the form itself will be established by regulation. See Comment KF 37 for more information.

**Comment [KF42]:** There will still be a requirement for a nominee to complete and submit this document, but the form itself will be established by regulation. See Comment KF 37 for more information.

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- | ~~9.7~~14.7 In the event a nomination is refused, the Electoral Officer will specify the reason for the rejection.
- | ~~9.8~~14.8 The Electoral Officer will, without unreasonable delay, post a public notice listing the names of the candidates for positions of Grand Chief and Council Chiefs.
- | ~~9.9~~14.9 In the event that more than one (1) Grand Chief is nominated and verified as a candidate and more than the required number of Council Chiefs are nominated and verified as candidates, the Electoral Officer will declare that an election will be held for those positions on ~~the date established for~~ Election Day.
- | ~~9.10~~14.10 Where, immediately before the close of a nomination period, there is an insufficient number of nominees to fill all positions on Council, the Electoral Officer, will declare the first nomination period adjourned and will re-open the nomination period for a second session two (2) days later. No nomination period will consist of more than two (2) sessions.

| ~~10.15.~~ WITHDRAWAL OF CANDIDACY

- | ~~10.1~~15.1 The withdrawal of a candidate's candidacy must be in the form of a sworn statement and signed in the presence of the Electoral Officer or a commissioner of oaths. The sworn statement must be addressed to the attention of the Electoral Officer and must contain a statement to the effect that the candidate freely and voluntarily withdraws their candidacy from the election. The sworn statement must be received by the Electoral Officer before the hour of twelve noon (12:00 p.m.) on the Wednesday immediately preceding Election Day.
- | ~~10.2~~15.2 If the ballots have already been printed at the time of the withdrawal of a candidacy, the Electoral Officer will cause the name of the withdrawing candidate to be blacked out and notices of the candidate's withdrawal will be posted in conspicuous locations within the Mohawk Territory of Kahnawà:ke, Territory.
- | ~~10.3~~15.3 If after a candidate withdraws there remains only one (1) candidate for Grand Chief or the remaining number of candidates for Council Chiefs are equal to the number to be elected, the Electoral Officer will declare those candidates elected by acclamation.

| ~~11.~~ COUNCIL COMPOSITION

- | ~~11.1~~ The Mohawk Council of Kahnawà:ke is a twelve (12) member Council composed of eleven (11) Council Chiefs and one (1) Grand Chief.

| ~~12.~~ ELECTION OF GRAND CHIEF AND COUNCIL CHIEFS

- | ~~12.1~~ The positions of Grand Chief and Council Chiefs are filled by the candidates receiving the highest number of votes.

## 13.16. ELECTION BY ACCLAMATION

13.16.1 Election by acclamation is declared if there is only one (1) ~~candidate person nominated~~ to serve as Grand Chief. The Electoral Officer will declare the election uncontested and further declare the candidate duly elected.

13.16.2 If the number of ~~candidates persons nominated~~ to serve as Council Chiefs is equal to the number of positions required, the Electoral Officer will declare the elections uncontested and further declare the candidates duly elected.

13.16.3 The term of office of a Grand Chief or Council Chief who is elected by acclamation will begin immediately upon the end of the Incumbent Council's term of office as defined in s. 30.2 ~~31.2~~ of this Law.

## 14. TERMS OF OFFICE

14.1 ~~The term of office of the Grand Chief and each Council Chief will be three (3) years.~~  
[amended MCR #11/2005-2006]

14.2 ~~There is no limitation on the number of terms of office a Grand Chief or Council Chief may serve.~~

## 15. WHO CAN HOLD OFFICE

15.1 To be eligible to hold the office of Grand Chief or Council Chief, a person:

- ~~(a) must meet the requirements of the Kahnawà:ke Membership Law and be listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry;~~
- ~~(b) must be fifty (50 %) percent or more Kanien'kehá:ka Blood quantum;~~
- ~~(c) must be Kanien'kehá:ka of Kahnawà:ke and not of any other Kanien'kehá:ka community;~~
- ~~(d) must not be married to or living common law with a non-Native person;~~
- ~~(e) must be a minimum of twenty one (21) years of age;~~
- ~~(f) must be ordinarily resident~~
- ~~(g) must declare all their private business holdings~~
- ~~(h) must not have been, within the previous six (6) years, convicted and sentenced for a criminal offense. The six (6) year ban commences only after sentence has been served in full;~~

**Comment [KF43]:** It is proposed that it be clarified how this would operate if there is no Election due to all positions being filled by acclamation. Perhaps there should be a set time as to when acclaimed candidates will take office and become Chiefs on Election Day? The time of 6:00 pm as of Election Day would be a suitable time for a new term of office to begin, since that is when voting would have ended had there been an Election.

- (i) ~~if he or she has previously served on Council in the term immediately before the current election, he or she must not have been removed from office; and~~
- (j) ~~must be willing to submit to and then pass a test for illegal drugs, after being elected to the position of Grand Chief or Council Chief.~~

15.2 ~~For greater certainty, the term "criminal offense" contained in subsection 15.(1)(h) includes any conviction for an indictable offense or three (3) summary conviction offenses committed within a period of five (5) years. In the case of the latter, the six (6) year ban from holding office will commence after the last of the summary conviction offense sentence has been served in full. Criminal conviction for a tobacco charge (possession, manufacture or transport) will not be considered as a criminal offense for the purpose of this Law.~~

**Comment [KF44]:** It is proposed that this provision be included with the definition of Criminal Offense."

#### 16. VACANCIES IN COUNCIL

16.1 ~~The vacancy of a Council position due to death, resignation or removal from office occurring more than eighteen (18) months before the date of the next selection of Council Chiefs, will be filled by calling for nominations to fill the vacancy. This should be done one (1) week following the vacancy. A by election should be called two (2) weeks following the nomination.~~

**Comment [KF45]:** It is proposed that this provision be moved towards the end of this law for purposes of improving chronology/flow.

### PART III SECTION III

#### 17. PREPARATION OF THE POLL

17.1 ~~The Electoral Officer will prepare and manage the poll in accordance with the rules prescribed by regulation.~~

17.2 ~~The form and composition of the ballots will be prescribed by regulation.~~

17.1 ~~The Electoral Officer will procure as many ballot boxes as are required and will prepare a sufficient number of ballots for the purpose of the election.~~

17.2 ~~Every ballot box will be constructed in a manner that allows the ballots to be deposited therein, but not removed without breaking the lock.~~

17.3 ~~The ballot boxes will be locked before witnesses immediately before the poll opens.~~

17.4 ~~The ballots will indicate in capital letters, the names of the candidates, as provided in the candidate's nomination forms, and will be listed in alphabetical order.~~

17.5 ~~A boxed space will be provided on the ballots horizontally aligned with each candidate's name into which Electors may mark their vote.~~

**Comment [KF46]:** See Comment KF33.

An area identified where it may be beneficial to have a regulation is in matters concerning ballots and the casting of ballots. Timely amendments may be required to respond to advances in technology and/or best practices. Other sections of the law are expected to remain largely static for the foreseeable future.

As such, it is proposed that provisions concerning ballot boxes, the form and content of ballots, issuing ballots, casting and counting ballots be transferred into a regulation (unless a reference to a "ballot" in general). It is intended that any required amendments could more efficiently be approved through a regulatory process than the CDMP for amendments.

**Comment [KF47]:** It is expected that an Elector will continue to cast a ballot, but the process for marking and depositing that ballot, and whether a paper ballot will continue to be used, is subject to change based on advances in technology and/or best practices. See Comment KF 46 for more information.

~~17.6 Each ballot will bear the name of the community, the date of the election, the number of candidates to be elected and the phrase "Mark your ballot with an X", on the top portion thereof.~~

~~17.7 The reverse side of each ballot will have space provided for the initials of the Electoral Officer or the Assistant Electoral Officer, and the initials of an Election Scrutineer.~~

**Comment [KF48]:** It is proposed that these provisions be removed from the law and transferred into a regulation. See Comment KF 46 for more information.

## 18. POLLING LOCATION PLACE

~~18.1 The Electoral Officer will, before the poll is open, deliver to the Election Scrutineers, the ballot boxes, the ballots, materials for marking the ballots, copies of the Voters List and direction for the voting procedure.~~

**Comment [KF49]:** It is proposed that this provision be removed from the law and transferred into a regulation. See Comment KF 46 for more information.

18.12 The Electoral Officer and Assistant Electoral Officer will provide compartments at the polling place where Electors can mark their ballots in privacy and free from observation of any other person.

18.23 Except as specifically provided in this Law, not more than one (1) Elector will be permitted in the vicinity of a polling compartment at any one time.

18.34 The Electoral Officer may request one or more officers of the Kahnawà:ke Peacekeepers to be present at the polling location place to aid in the maintenance of peace and order at the election.

18.45 Any person, who by reason of intoxication or other conduct affecting peace and order of the election, will be required to leave the polling location place and their right to vote in that election will be forfeited.

18.56 The Electoral Officer will ensure that no person blocks the entrance or hinders access to a polling location.

18.67 The Electoral Officer will ensure that no partisan election campaign advertising will be present at or near the polling location station.

18.78 The Electoral Officer will ensure that no fundraising activities will occur at the polling location station.

## 19. ELECTION PROCEDURES

19.1 The poll will be kept open between nine (9 a.m.) o'clock in the morning until six (6 p.m.) o'clock in the evening (local time) on Election Day.

~~19.2 The Electoral Officer and Assistant Electoral Officer will, immediately before the commencement of the poll.~~

(a) open the ballot boxes and call such persons as may be present to witness that the boxes are empty; and

(b) will then lock the ballot boxes in full view of those present.

19.3 If ballot boxes become full, they may be opened periodically during the course of the day for the purpose of transferring the contents into a larger box. This process is to be witnessed by two (2) persons, preferably by candidates.

**Comment [KF50]:** It is proposed that these provisions be removed from the law and transferred into a regulation. See Comment KF 46 for more information.

19.24 Each person who presents himself or herself for the purpose of voting will state his or her name to the Polling Clerk Election Scrutineer and, if satisfied as to the identity of the Elector and that the name of the Elector is entered on the Voters List at the polling place, the Polling Clerk Election Scrutineer will initial the back of a ballot and provide it to the Elector in order to cast his or her vote.

**Comment [KF51]:** In light of prior proposed amendments (see Comment KF 46 for more information), it is further proposed that this provision be amended to reflect that it may not be a paper ballot that is used.

19.35 The Polling Clerk Election Scrutineer will verify that the person is an eligible Elector, hand the Elector a ballot and register the Elector as having voted once the ballot is returned.

**Comment [KF52]:** In light of prior proposed amendments (see Comment KF 46 for more information), it is further proposed that this provision be amended to reflect that it may not be a paper ballot that is used.

19.46 If the Polling Clerk Election Scrutineer has reason to believe that a person requesting to vote is not an Elector, has already voted or is falsely representing himself or herself, the Polling Clerk Election Scrutineer will refer the Elector to the Electoral Officer who will determine whether the person is entitled to vote.

## 20. VOTERS LIST

20.1 The Voters List that is to be used for the selection of Council Chiefs or Grand Chief, should be prepared by the Membership Registrar not less than one (1) month before Election Day, the date of the selection.

20.2 The Voters List will consist of the names of all Electors, community members who are Electors, as defined by this Law.

## 21. VOTING

21.1 An Elector will cast a ballot in accordance with the process for marking and depositing a ballot as prescribed by regulation.

**Comment [KF53]:** As mentioned previously, it is expected that an Elector will continue to cast a ballot. However, the process for marking and depositing that ballot, and whether a paper ballot will continue to be used, is subject to change based on advances in technology and/or best practices. See Comment KF 46 for more information.

21.2 All ballots cast on Election Day will be at the Polling Location. No off-site voting will be permitted.

21.1 An Elector, upon receiving a ballot, will forthwith proceed to one of the polling compartments provided for marking the ballots and then mark his ballot, by placing an "X" in the box horizontally aligned with the name of the candidate or candidates for whom he chooses to vote.

**Comment [KF54]:** It is proposed that a provision be included whereby there is to be no off-site voting held on Election Day. As such, all votes cast on Election Day would be at the Polling Location. Concern was raised in the past about problems administering off-site voting.

~~21.2 While an Elector is in a polling compartment, no other person will be allowed in the same compartment, or be in any position from which he can see the manner in which the Elector marks his ballot.~~

~~21.3 The Elector will then fold his ballot, so as to conceal the names of the candidates he has voted for, but in such a way that the initials of the Electoral Officer, Assistant Electoral Officer or Scrutineer are exposed. He will then deliver the ballot to the person who issued it to him, who will verify his initials and at once and in full view of those present, deposit the ballot in the ballot box. The Election Scrutineer will then note on the Voters List that the Elector has voted.~~

~~21.4 An Elector who receives a spoiled or improperly printed ballot, or who has dealt with his ballot in such a manner that it cannot be conveniently used, is entitled to receive another ballot, by returning it to the person who issued it. The Electoral Officer will thereupon write the word "CANCELED" on the spoiled ballot and preserve it.~~

~~21.5 An Elector who makes a declaration that he is unable to mark his ballot by himself, by reason of a disability or because he cannot read, may be assisted by the Electoral Officer, Assistant Electoral Officer or Scrutineer. The name of the Elector should be recorded in a specified log.~~

~~21.6 Any person who has received a ballot and who leaves the polling place without returning it, or, if after receiving same, refuses to vote, will forfeit his right to vote at that election and Electoral Officer will make a note that such person received a ballot and declined to vote, in which case, the Electoral Officer will mark upon the face of the ballot the word "DECLINED" and all ballots so marked will be preserved.~~

**Comment [KF55]:** It is proposed that these provisions be removed from the law and transferred into a regulation. See Comment KF 46 for more information.

~~21.37~~ In the event of an error on the Voters List on polling day, or in the event an Elector's name has been inadvertently omitted, an Elector may apply to the Electoral Officer to have the necessary corrections made.

~~21.48~~ Where a person's name is not included on the Voters List, the Electoral Officer, and Assistant Electoral Officer will immediately make such inquiries as are necessary to confirm whether the person is an Elector and is eligible to vote. Only after such confirmation, will the person be given a ballot and permitted to vote. The Electoral Officer or Assistant Electoral Officer should refer a person to representatives of the MCK Membership Department to clarify why that person is not on the Voters List.

~~21.59~~ Every Elector who is inside the polling place at the time fixed for closing the poll, will be entitled to vote.

22. ADVANCE POLL ~~SPECIAL POLL~~

**Comment [KF56]:** It is proposed that the term "Advance Poll" replace the term "Special Poll".

22.1 The Electoral Officer will hold one or more Advance Polls ~~a special poll~~ not more than ten (10) days prior to Election Day. The advance poll ~~The special poll~~ is for the purpose of receiving the votes of Electors who expect to be unable to cast their votes on Election



Day. For purposes of clarity, advance polls will be held at senior and healthcare institutions so that residents may cast their votes. The Electoral Officer may, upon request, visit the homes of Electors who cannot leave their residences due to medical restrictions.

**Comment [KF57]:** It is proposed that it be clarified that more than one advance (special) poll can be held and that such polls can be held at places like the KMHC and KSCS Home & Community Care Center (this has been a practice in past years).

22.2 Should a candidate withdraw his or her candidacy prior to Election Day but after the date of an advance poll, ~~special poll~~, the ballots cast in the advance poll ~~special poll~~ remain valid, other than any votes cast for the withdrawing candidate, which will be deemed to be null and void.

22.3 The advance poll ~~special poll~~ will be located at a convenient central location on the Mohawk Territory of Kahnawà:ke and will be open for at least two (2) consecutive hours, at the discretion of the Electoral Officer.

22.4 Notice of an advance poll ~~a special poll~~ will be given at least seven (7) days in advance, and will include reference to the time and place of the special poll.

## 23. VOTING AT ADVANCE POLL SPECIAL POLL

23.1 Voting at ~~a special poll~~ an advance poll will be conducted in the same manner as voting on Election Day, with such modification or adaptation of this Law or applicable regulations as the Electoral Officer deems necessary.

## 24. CRITERIA FOR VOTING IN ADVANCE POLL A SPECIAL POLL

24.1 The Electoral Officer may, at his or her discretion, approve a request from an Elector to cast a ballot in ~~a special poll~~ an advance poll, if:

(a) a written request is received by the Electoral Officer at least forty-eight (48) hours before the time of an advance poll; ~~a special poll~~; and

(b) the reasons for the request are deemed by the Electoral Officer to be satisfactory.

24.2 Without limiting the discretion of the Electoral Officer, some possible reasons for a person to cast a ballot in an advance poll a special poll include: hospitalization, education, training or employment commitments or a physical handicap.

**Comment [KF58]:** It is proposed that the Technical Drafting Committee evaluate whether this non-exhaustive list is necessary since it does not limit the factors to consider. As it essentially sets out examples, such a list may be better suited for inclusion in work instructions for the Electoral Officer.

## 25. SPECIAL-ADVANCE POLL BALLOTS AND ADVANCE SPECIAL-POLL LISTS

25.1 All ballots cast at an advance poll a special poll will be retained in a locked ballot box and remain in a secure location and in the legal possession of the Electoral Officer until the close of the poll on Election Day.

**Comment [KF59]:** In light of prior proposed amendments (see Comment KF 46 for more information), it is further proposed that this provision be amended to reflect that it may not be a paper ballot that is used.

- 25.2 The Electoral Officer will maintain a list of Electors who vote at an advance poll ~~a special poll~~ and the names of these Electors will be crossed off the copies of the Voters List given to the Polling Clerks Election Scrutineers on Election Day.

**Comment [KF60]:** It is proposed that this statement be clarified. It appears intended for physically crossing off names of Electors from a hard copy of the Voters List, which is not the practice.

## 26. ELIGIBILITY TO VOTE

- 26.1 Subject to the other provisions of this Law, to be eligible to vote in an Election, Council election, including an advance poll, special poll, an Elector:

- (a) must be listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry and must not have had their benefits and entitlements as a member suspended; and
- (b) must be at least eighteen (18) years of age, as of the date of Election Day;
- (c) must be listed on or entitled to be listed, as per section 21.2, 21.7, on the Voter List.

**Comment [KF61]:** It is proposed that there be a clarification that not only must an Elector be listed as a member on the KKR but that their benefits and entitlements as a member have not been suspended. This has been the expectation but it is not reflected in the content of the law.

## 27. POLLING DAY DUTIES

- 27.1 The Polling Clerks Election Scrutineers will record, in a specific log, any problems encountered with Electors or other persons and any decisions of the Electoral Officer.
- 27.2 The Electoral Officer, Assistant Electoral Officer or Polling Clerk Election Scrutineer will explain the voting procedure to any Elector at his or her request.
- 27.3 The Electoral Officer will ensure that no partisan election campaign advertising can be seen from the polling location, and ensure that no person enters the polling location with such advertising displayed.
- 27.4 The Electoral Officer will ensure that no fundraising is done at the polling location, including the grounds surrounding the premises.

**Comment [KF62]:** It is proposed that the rule prohibiting partisan election campaign advertising being seen from the polling location be re-evaluated. As drafted, an individual would be unable to display partisan election campaign advertising on private property if someone situated at the polling location could see it. Although there should be no partisan election campaign advertising at the polling location it is unreasonable to expect the Electoral Officer to prevent someone from exhibiting partisan campaign advertising on private property.

Consideration should also be made to merging section 27.3 and section 18.7 of the current *MCK Election Law*, which are generally similar.

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## PART IV POST-ELECTION SECTION IV

## 28. COUNTING THE VOTES

- 28.1 After the closing of the poll on Election Day, the Electoral Officer or Assistant Electoral Officer will see to it that all persons vacate the polling place, with the exception of the Polling Clerks, Election Scrutineers, on-duty Kahnawà:ke Peacekeepers, candidates who wish to attend the counting of the votes and one (1) representative for each candidate.

- 28.2 The rules concerning preparation of any counting stations and the procedure for counting and rejecting votes will be prescribed by regulation.

**Comment [KF63]:** As mentioned previously, it is expected that an Elector will continue to cast a ballot. However, the process for marking and depositing that ballot, and whether a paper ballot will continue to be used, is subject to change based on advances in technology and/or best practices. The current process for counting votes, including the setup of counting stations, are intended paper ballots. As usage of paper ballots is subject to change it is proposed that the rules concerning preparation of counting stations and the procedure for counting and rejecting votes be removed from the law and transferred into a regulation. See Comment KF 46 for more information.

- ~~28.2 Counting stations will be set up with two (2) Election Scrutineers and a minimum of two (2) representatives of candidates in each station. Candidates may observe counting stations as they wish.~~

~~28.3 In counting the votes, the Electoral Officer will reject any ballot:~~

- ~~(a) that was not initialed by the Electoral Officer or Assistant Electoral Officer;~~
- ~~(b) that is blank;~~
- ~~(c) on which there appear to be more votes than there are positions to be filled;~~
- ~~(d) on which there appear marks or writing identifying the Elector; or~~
- ~~(e) any vote that does not clearly indicate the Elector's intention.~~

~~28.4 Where a candidate or candidate's representative object to a decision of the Electoral Officer concerning the counting of a vote in a community election, the Electoral Officer will;~~

- ~~(a) decide any question arising out of the objection;~~
- ~~(b) record the objection and the decision in an appropriate log; and~~
- ~~(c) write on the back of a ballot the word or words "ALLOWED", "ALLOWED IN PART", or "REJECTED", as the case may be, and initial the ballot.~~

~~28.5 No ballot will be disqualified by reason only that the mark adjacent to the name of the candidate is not an "X".~~

**Comment [KF64]:** It is proposed that these provisions be removed from the law and transferred into a regulation. See Comment KF 46 for more information.

## 29. RECOUNT OF VOTES

29.1 The Electoral Officer will recount the votes for a position to be filled at a Council election:

- (a) where it appears that two (2) or more candidates have an equal number of votes, and an additional vote would entitle one (1) or more of them to be elected, or;
- (b) at the request of an affected candidate, where there are ten (10) or less votes separating a candidate who is elected and a candidate who is not so entitled.

The Electoral Officer will organize and supervise a recount of the ballots affecting the election, which may be attended by any candidate or their representative.

29.2 A recount should take place immediately at the polling place and if, after the recount, one or more candidates are still not satisfied, a second recount should be made or even a third, depending on the circumstances. The Electoral Officer will, in his or her sole discretion, decide when the number of recounts has been satisfactory for the purpose.

29.3 A candidate may request a recount if there are less than ten (10) votes separating a candidate who is elected and a candidate who is not elected, and the Electoral Officer must oblige.

29.4 The Electoral Officer, candidates and the candidate's representatives will have the right to request a recount of any candidate's votes. A candidate or representative cannot refuse a recount.

29.5 Where, after one or more recounts of votes, there exists an equal number of votes for each of the two (2) or more candidates for a position, the Electoral Officer will within seven (7) days of Election Day hold a second poll for those candidates for that position, with such modification or adaptation of this Law as the Electoral Officer deems necessary.

29.6 If for any reason a recount of votes is requested after the day on which the poll was held, the request must be made in writing by one or more candidates to the Electoral Officer within forty-eight (48) hours after the poll closed. A recount will take place within seven (7) days.

### 30. DECLARATION OF POLL RESULTS

30.1 Immediately after the completion of the counting of the votes, the Electoral Officer and the Assistant Electoral Officer will tabulate the results and will publicly declare to be elected the candidates having the highest number of votes.

30.2 The terms of office of the incumbent Council will end immediately after the election results are made public.

30.3 In the event of a recount, the unaffected candidates will be declared elected and the Electoral Officer will report to the community the results of the recount.

### 31. ELECTION MATERIALS

31.1 The Electoral Officer will have the legal possession and will retain and safeguard all the election materials used in an election, including the ballots, any ballot boxes, Voters List, poll logs, and a report of the election results for a period of fourteen (14) days after Election Day.

31.2 Fourteen (14) days after Election Day, the Electoral Officer will remit to the Mohawk Council of Kahnawà:ke, all the materials used in the election, except the ballots, if any, which will be destroyed by the Electoral Officer in the presence of two (2) witnesses, who will make a declaration that they witnessed the destruction of ballots. In the event of an appeal the Electoral Officer will not destroy any ballots until such time as a decision is rendered.

**Comment [KF65]:** In light of prior proposed amendments (see Comment KF 46 for more information), it is further proposed that this provision be amended to reflect that there may not be ballot boxes.

**Comment [KF66]:** Proposed clerical amendment

**Comment [KF67]:** In light of prior proposed amendments (see Comment KF 46 for more information), it is further proposed that this provision be amended to reflect that there may not be any ballots to destroy.

**Comment [KF68]:** It is proposed that this section be amended to allow, in the event of any appeal concerning the ballots, recounts or any other related matter, for the destruction of the ballots to be delayed until such time as the appeal is decided.

- 31.3 All other documents related to the election should be retained for a period of two (2) years.
- 31.4 No Electoral Officer, Assistant Electoral Officer or Polling Clerk, Election Scrutineer, will divulge any information obtained by him or her with respect to the conduct of an election, except in the case of a legal proceeding respecting the election.

## 32. PRE-ELECTION DECISIONS AND REVIEW

- 32.1 There is established the Elections Review Board.
- 32.2 The Board is comprised of three (3) community members and one (1) auxiliary member, all selected at the same meeting at which the Electoral Officer is selected. Board members must have the same eligibility requirements as the Electoral Officer.
- 32.3 Board members hold office from the date of their selection until the polls close on election day.
- 32.4 The Board's function is to, when requested by an Elector, review the decision taken by the Electoral Officer with respect to such decisions as:
- a) a candidate's eligibility to run in the election or to hold office;
  - b) compliance with nomination procedures;
  - c) application or non-application of a provision of the Election Law or its regulations;
  - d) an Elector's eligibility to vote;
  - d) a community member's eligibility to be on the Voter's List;
  - e) any other decision taken by the Electoral Officer prior to the closing of the polls on election day.
- 32.5 Requests for review of a decision of the Electoral Officer are made verbally and decided as expediently as possible and in such a manner as not to inhibit election proceedings.

**Comment [KF69]:** A proposal to establish an Elections Review Board ("Board") was rejected at the CDMP session held on September 23, 2014. Consensus was reached that such a body was not required. However, there was a fundamental misunderstanding as to the purpose of this body.

When requested by an Elector, the Board would have reviewed any decisions taken by the Electoral Officer prior to the closing of the polls on Election Day. Examples included decisions concerning eligibility to hold office, compliance with nomination procedures, and an elector's eligibility to vote. Requests for review would have been made verbally and decided as expediently as possible and in such a manner as not to inhibit election proceedings.

However, despite this consensus to reject the establishment of this Board, it is in the best interests of the election process that provision be made for certain decisions that may be challenged to be reviewed and rulings issued without undue delay. As such, It is proposed that a body be established whereby requests for review of a decision of the Electoral Officer are made verbally and decided as expediently as possible and in such a manner as not to inhibit election proceedings. The sections setting out the (unapproved) Board are reproduced here for reconsideration and discussion.

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## 33. POST-ELECTION APPEALS

- 33.1 The appeal procedures set out in this section apply to any matter related to a Council election.
- 33.2 Appeals must be submitted in writing and sent by registered mail, email or facsimile transmission or by bailiff to the Court of Kahnawà:ke not more than seven (7) days after Election Day.

**Comment [KF70]:** See Comment KF33.

32.333.3 Appeals may be submitted by any person listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry ~~community member listed on the Kahnawà:ke Kanien'kehá:ka Registry~~ who has reasonable grounds for believing that:

**Comment [KF71]:** It is proposed that if the individual is to be a person listed as a member on the KKR that such terminology be used.

- (a) there was a corrupt practice in connection with the election;
- (b) there was a violation of this Law that might have affected the result of the election; or
- (c) a person elected to the position of Grand Chief or Council Chief does not meet the eligibility criteria set out in this Law.

32.433.4 Appeals must state the grounds on which the appeal is based and must be accompanied by copies of any documents and the names of any witnesses the appellant believes to be relevant to the appeal.

32.533.5 The Court of Kahnawà:ke will, within seven (7) days of the receipt of an election related appeal, forward a copy of the appeal together with all related materials by registered mail to the Electoral Officer and to each candidate involved in the election.

32.633.6 The Electoral Officer or any candidate may within seven (7) days of the receipt of the copy of an appeal, forward to the Court of Kahnawà:ke, by registered mail, email, facsimile transmission, bailiff or in any other way that reasonably ensures proof of reception of a written answer to the particulars set out in the appeal, together with any supporting documents and the names of any supporting witnesses.

32.733.7 The Court of Kahnawà:ke will appoint a Justice to review the appeal and the answers, if any, submitted by the Electoral Officer and candidates.

32.833.8 The Justice appointed to hear the appeal may decide the appeal based solely on the written materials that have been submitted or, if the material that has been received is not adequate for deciding the appeal, conduct such public hearings into the matter as he or she deems necessary.

32.933.9 The Justice will after due consideration, decide the merits of the matters raised in the appeal and order any remedies that may be appropriate. The Court's decision, with reasons, will be communicated to the appellant, the Electoral Officer and the candidates either in person, if the matter proceeds to a hearing in the Court of Kahnawà:ke, or in writing sent by registered mail to each party.

32.1033.10 The Justice will have fifteen (15) days to render a decision from the date an appeal is heard and will have an additional forty-five (45) days to render a written judgment.

32.1133.11 The Justice may in his or her decision, declare that the results of the election are valid, overturn the election results in whole or in part to the extent that the violations or

wrongdoing affected the results, may order that another election be conducted or may order any other appropriate relief.

~~32.12~~33.12 The Justice may as part of his or her decision, order any party to an appeal to pay some or all of the legal expenses incurred by any other party in the appeal.

~~32.13~~33.13 The decision will be made known to the community of Kahnawà:ke.

~~32.14~~33.14 The decision is final and is not subject to further appeal.

#### 34. VACANCIES IN COUNCIL

34.1 The vacancy of a Council position due to death, resignation or removal from office occurring more than eighteen (18) months before the date of the next selection of Council Chiefs, will be filled by calling for nominations to fill the vacancy. This should be done one (1) week following the vacancy. A by-election should be called two (2) weeks following the nomination, with such modification or adaptation of this Law as the Electoral Officer deems necessary.

### PART V - FINAL SECTION V

#### 35. REGULATIONS

35.1 The Council may ratify regulations with respect to any matter outlined in this Law.

**Comment [KF72]:** As mentioned previously, it was proposed that this provision be moved from its original position (currently section 16.1 of the current *MCK Election Law* – halfway through the law) towards end of the law for purposes of improving chronology/flow.

**Comment [KF73]:** It is proposed that a provision be included that explicitly authorizes the creation of regulations pursuant to the law.

#### ~~33~~36. COMING INTO FORCE

~~33.13~~36.1 This Law comes into force on the day it is enacted by Resolution of the Mohawk Council of Kahnawà:ke.

#### 3437. AMENDMENTS

~~34.13~~37.1 This Law repeals and replaces any previous Regulations Governing the Mohawk Council of Kahnawà:ke Elections.

~~34.23~~37.2 This Law may be amended in accordance with the procedure set forth in the Community Decision Making Process.



## MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW

### SCHEDULE "A"

#### NOMINATION FORM

I, \_\_\_\_\_, affirm that I am a member of the community of Kahnawà:ke and that I am eligible to vote in elections of the Mohawk Council of Kahnawà:ke.

I hereby nominate \_\_\_\_\_ for the position of  
Please print  
\_\_\_\_\_ in the Council elections to be conducted in the year \_\_\_\_\_.

Signed within the Mohawk Territory of Kahnawà:ke, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Cell number \_\_\_\_\_ Home number: \_\_\_\_\_

Signature \_\_\_\_\_ Witness \_\_\_\_\_

I, \_\_\_\_\_, affirm that I am a member of the community  
\_\_\_\_\_. Please print  
\_\_\_\_\_ of Kahnawà:ke and that I am eligible to vote in elections of the Mohawk Council of Kahnawà:ke.

I hereby second the nomination set out above.

Signed within the Mohawk Territory of Kahnawà:ke, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Cell number \_\_\_\_\_ Home number: \_\_\_\_\_

Signature \_\_\_\_\_ Witness \_\_\_\_\_

THIS NOMINATION FORM WAS RECEIVED BY THE ELECTORAL OFFICER

AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

(time of day)

**Comment [KF74]:** As mentioned previously, it is proposed that the form and content of these declarations no longer comprise a schedule to the Law. Transfer of the form and content of these declarations from the law to a regulation would enable quicker amendments should modifications be required from election to election. Presently, any official revision to the form and content of these declarations would require an amendment of the law.

# MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW

## SCHEDULE "B"

### DECLARATION OF CANDIDACY

I, \_\_\_\_\_ acknowledge that I have been nominated as a  
\_\_\_\_\_. Please print  
candidate for the position of \_\_\_\_\_ of the Mohawk Council of  
Kahnawà:ke for the Council election to be held in the year \_\_\_\_\_.  
\_\_\_\_\_

**I hereby accept the nomination and declare my candidacy for this position.**

I understand and agree that by accepting this nomination, I am bound by the provisions of the  
*Mohawk Council of Kahnawà:ke Election Law*, a copy of which was provided to me by the Electoral  
Officer.

**Signed** within the Mohawk Territory of Kahnawà:ke this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

Cell number \_\_\_\_\_ Home number: \_\_\_\_\_

\_\_\_\_\_  
Signature \_\_\_\_\_ Witness \_\_\_\_\_

THIS DECLARATION OF CANDIDACY FORM WAS RECEIVED BY THE

ELECTORAL OFFICER AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

(time of day)

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## MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW

### SCHEDULE "C"

#### DECLARATION OF ELIGIBILITY

I, \_\_\_\_\_ declare that I meet the eligibility criteria set out in  
\_\_\_\_\_. Please print  
the *Mohawk Council of Kahnawà:ke Election Law* to be a candidate for the office of Grand Chief or  
Chief of the Mohawk Council of Kahnawà:ke. More specifically, I declare that:

1. I am a member of the Kahnawà:ke community under the *Kahnawà:ke Membership Law* and I  
am so registered on the Kahnawà:ke Kanien'kehá:ka Registry;
2. I have fifty (50 %) percent or more Kanien'kehá:ka Blood quantum;
3. I meet the Kahnawà:ke Membership Law;
4. I am not presently married to a non Native person, nor do I live in a common-law  
relationship with a non Native person;
5. I am at least twenty-one (21) years of age;
6. I am ordinarily resident within the Mohawk Territory of Kahnawà:ke.

**By signing this Declaration, I give my consent that if elected to the position of Grand Chief  
or Chief of the Mohawk Council of Kahnawà:ke I will submit to a test to verify that I do not  
use illegal drugs. I understand and agree that if I do not pass this test, I will no longer be  
eligible to hold the position of Grand Chief or Chief of the Mohawk Council of Kahnawà:ke  
and will be removed from office.**

Further, for the purpose of assessing my eligibility to hold office as Grand Chief or Chief of the  
Mohawk Council of Kahnawà:ke, I declare that (check one):

☐ I have never been convicted of an indictable offence or felony within any legally  
recognized jurisdiction;

**OR**

☐ I have been convicted of the following indictable offences or felonies (list type of offence,  
sentence, date, jurisdiction and whether a pardon has been granted):

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I further declare that (check one):

☐ I have never been a member of the Mohawk Council of Kahnawà:ke;

OR

☐ I was previously a member of the Mohawk Council of Kahnawà:ke (give details of the years during which you held office, position held and whether you were ever removed from office prior to the expiry of your term):

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I understand and agree that any false, incomplete or misleading information contained in this Declaration of Eligibility will result in my disqualification to run for or to hold office with the Mohawk Council of Kahnawà:ke. I further understand and agree that the information contained in this Declaration of Eligibility will be verified by the Electoral Officer to determine whether I am eligible to be a candidate in the Council election.

**By signing below, I solemnly declare the foregoing to be true, knowing that such declaration has the same force and effect as a declaration under oath.**

Signed within the Mohawk Territory of Kahnawà:ke, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_,

\_\_\_\_\_

Signature \_\_\_\_\_

Witness \_\_\_\_\_

THIS DECLARATION OF ELIGIBILITY FORM WAS RECEIVED BY THE

ELECTORAL OFFICER AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

(time of day)

**MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW  
SCHEDULE "D"**

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**DECLARATION CRIMINAL OFFENCE CHARGE(S) PENDING**

I, \_\_\_\_\_, have been nominated as a candidate for a position on the Mohawk Council of Kahnawà:ke. In this regard I affirm that as of the date mentioned herein below:

☐ I have not been charged and do not have any criminal offence charges (indictable offence or felony) pending against me within any legally recognized jurisdiction;

**OR**

☐ I have been charged and do have any criminal offence charges (indictable offence or felony) pending against me within any legally recognized jurisdiction and the nature of the(se) charge(s) is/are described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~I therefore consent to having the Electoral Officer named below request and obtain such information (the "verification information") as, in his or her discretion, may be necessary to verify the information contained in this Declaration. For this purpose, I hereby agree to waive all rights of privacy and confidentiality that I might otherwise claim under Kahnawà:ke, federal, state or provincial law.~~

~~I understand and agree that any false, incomplete or misleading information contained in this Declaration will result in my disqualification to run for or to hold office with the Mohawk Council of Kahnawà:ke. I further understand and agree that the information contained in this Declaration will be verified by the Electoral Officer.~~

~~By signing below, I solemnly declare the foregoing to be true, knowing that such declaration has the same force and effect as a declaration under oath.~~

Signed within the Mohawk Territory of Kahnawà:ke, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Signature \_\_\_\_\_ Witness \_\_\_\_\_

**THIS DECLARATION WAS RECEIVED BY THE ELECTORAL OFFICER**

AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

(time of day)

**MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW  
SCHEDULE "E"**

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**DECLARATION OF BUSINESS HOLDING**

I, \_\_\_\_\_, have been nominated as a candidate for a position on the Mohawk Council of Kahnawà:ke. In this regard I affirm that as of the date mentioned herein below:

☐ I have no business holdings and do not carry on any form of business in Kahnawà:ke;

**OR**

☐ I have the following business holdings and do carry on the following business(es) in Kahnawà:ke:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I therefore consent to having the Electoral Officer named below request and obtain such information (the "verification information") as, in his or her discretion, may be necessary to verify the information contained in this Declaration. For this purpose, I hereby agree to waive all rights of privacy and confidentiality that I might otherwise claim under Kahnawà:ke, federal, state or provincial law.

I understand and agree that any false, incomplete or misleading information contained in this Declaration will result in my disqualification to run for or to hold office with the Mohawk Council of Kahnawà:ke. I further understand and agree that the information contained in this Declaration will be verified by the Electoral Officer to determine whether I am eligible to be a candidate in the Council election.

**By signing below, I solemnly declare the foregoing to be true, knowing that such declaration has the same force and effect as a declaration under oath.**

Signed within the Mohawk Territory of Kahnawà:ke, this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

**THIS DECLARATION WAS RECEIVED BY THE ELECTORAL OFFICER**

AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

(time of day)

## MOHAWK COUNCIL OF KAHNAWÀ:KE ELECTION LAW

### SCHEDULE "F"

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#### PRIVACY WAIVER

I, \_\_\_\_\_, have been nominated as a candidate for a position on \_\_\_\_\_  
Please print  
the Mohawk Council of Kahnawà:ke. In this regard I have completed and signed a Declaration of Eligibility, the content of which is to be verified by the Electoral Officer for the purpose of determining my eligibility to be candidate in the Council election.

~~I therefore consent to having the Electoral Officer named below request and obtain such information (the "verification information") as, in his or her discretion, may be necessary to verify the information contained in my Declaration of Eligibility. For this purpose, I hereby agree to waive all rights of privacy and confidentiality that I might otherwise claim under Kahnawà:ke, federal, state or provincial law.~~

~~I understand that the Electoral Officer will hold the verification information in the strictest confidence and will not copy the information or provide it to any person other than me, at my request.~~

My date of birth is: \_\_\_\_\_

My place of birth is: \_\_\_\_\_

My Social Insurance Number

(and/or Social Security Number) is/are: \_\_\_\_\_

~~Signed within the Mohawk Territory of Kahnawà:ke this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.~~

\_\_\_\_\_  
Signature \_\_\_\_\_ Witness \_\_\_\_\_

THIS PRIVACY WAIVER FORM WAS RECEIVED BY THE ELECTORAL OFFICER

AT \_\_\_\_\_ ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2\_\_\_\_.

(time of day)