

RECOMMENDATIONS

PURPOSE

- **Section 2. Subsection 2.1** This Law provides 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. – Change all references to “Council” and “Chiefs” from English to Kanien’kéha terminology.

DEFINITIONS

- **Section 4. Subsection 4.1** **CRIMINAL OFFENSE** 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” 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 sentences 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; – It is recommended that this definition be reviewed, and a determination made as to whether the Electoral Officer should consider situations where a nominee has pled guilty to an offence but received a discharge and, as such, no conviction is registered against them. Presently, guilty pleas would not be considered in determining eligibility to run for Council if there was subsequently a discharge.
- **Section 4. Subsection 4.1** **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 a person who does not reside in Kahnawà:ke due to housing shortages; – The definition for ‘Ordinarily Resident’ is different from that in the Kahnawà:ke Residency Law.

ELECTION OF ELECTORAL OFFICER

- **Section 5. Subsection 5.4** The verification and screening process for the position of Electoral Officer will be in accordance with procedures established by resolution of

the Kahnawà:ke Justice Commission. This process will be completed no later than ten (10) days after the close of the submissions. – [new provision to be added] It is recommended that this timeframe be extended to allow additional time to complete the verification and screening process. The verification and screening process should always be completed without undue delay. However, the existing timeframe is unnecessarily tight and allows little room for flexibility should there be slight delays with background checks, scheduling interviews, etc. Recommend adding five (5) additional days.

- **Section 5. Subsection 5.8** If after the verification and screening process is completed and no candidate is eligible, the Kahnawà:ke Justice Commission will seek out a suitable candidate and appoint them to the position of Electoral Officer. – [new provision to be added] It is recommended that a clear timeframe be established for completing this task. An appropriate timeframe may be not less than sixty (60) days before Election Day since that would have been the deadline for holding an election for Electoral Officer pursuant to section 5.5 of the Law.

DUTIES OF ELECTORAL OFFICER

- **Section 6. Subsection 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 appoint a suitable candidate to replace the Electoral Officer. – [new provision to be added] It is recommended that this section be clarified. Will the Electoral Officer be removed from office if they fail to perform any duty established by the Law? If so, how will this happen? It is also recommended that an appropriate timeframe for appointing a suitable replacement be established.

(New Provision to be added) Limit the Electoral Officer to 2-terms

ELIGIBILITY REQUIREMENTS

- **Section 8. Subsection 8.1** The Electoral Officer, Assistant Electoral Officer and Polling Clerks:
 - b) 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 currently have their benefits and entitlements as a member suspended; – modification to terminology to KKL and do they have to meet the requirements of the KKL or do they need to be listed on the KKR? What about Common Law with non-native?
- **Section 8. Subsection 8.2** In addition to these eligibility requirements the Electoral Officer must also meet the requirements contained in their job description and must have the skills and experience necessary to conduct the Election in a fair, transparent and accountable manner, as to be evaluated by the Kahnawà:ke Justice Commission.

– [new provision to be added] It is recommended that “job description” be revised to “terms of reference” since that is what the document is actually called and better reflects that the office of Electoral Officer is not a “job” but an independent public office.

WHO CAN HOLD OFFICE

- **Section 12 Subsection 12.1** To be eligible to hold office the 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 currently have their benefits and entitlements as a member suspended; – requires a modification to terminology to KKL
 - (b) must have fifty (50%) percent or more Kanien’kehá:ka Blood Quantum – requires a modification to ‘must be listed on the Kahnawake Membership Database as 50%’ or change to 51%, or must have a number of great grandparents between 4-8
 - (d) must not be married to or living common-law with a non-Native person; – requires a modification to definition, how is residency determined? It is the same criteria as applying for a residency letter. If files contain stale information, a person may be denied a letter, what would the process be for Elections?
- [new provision to be added] It is recommended that to be eligible a person must have at least a high school level education.

NOMINATION PROCEDURE

- **Section 13. Subsection 13.3** Nominations of Candidates will be held between the hours of ten and twelve in the morning (10:00am to 12:00 noon) on Nomination Day. Nominations will not be accepted after the close of the nomination period. – [new provision to be added] The nomination trio (nominee, nominator and seconder) must be present to finalize a nomination and complete all required paperwork.
- **Section 13 Subsection 13.4** Any two (2) Nominators may nominate and second any person eligible to hold office, as a candidate for the position 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. – [new provision to be added] It is recommended that this section be clarified. Is it one person able to nominate for both positions or only one time nominating and one time seconding?

- **Section 13. Subsection 13.8** 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. – [new provision to be added] It is recommended that a timeline is incorporated into the law as it relates to the lack of a timeline for a nominee to submit their choice for candidacy when double nominated.
- It is also recommended that an addition be made to the **MCK Regulation Respecting Forms and Declarations, Preparation of Poll, Voting Process and Counting of Votes (Enacted by MCED#73/2018-2019 on Enniskó:wa/March 2018)** to create a dual-indicator form prepared and included in the nomination package. This form would provide a deadline time and date to submit and contain two signatures: one declining one position and the other accepting. Importantly, it would contain the notation that failure to comply with the deadline will involve forfeiture.

VERIFICATION PROCEDURE

- **Section 14 Subsection 14.1** 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: – [new provision to be added] A timeline to be incorporated in the law. The present timeline of three (3) days is not conducive to the requirements of the Office of Kahnawà:ke Kanien'kehá:ka Registry as lineages may need to be reviewed for some individuals.
- **Section 14. Subsection 14.4** 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. – [new provision to be added] A timeline to be incorporated in the law. The present timeline of seven (7) days is not conducive to the requirements of the Electoral Officer. Recommend extending to nine (9) days.
- [new provision to be added] In regard to “potential ineligibility” where a nominee may be subject to further scrutiny, it must be clarified as the responsibility of the Office of Kahnawà:ke Kanien'kehá:ka Registry, not the Electoral Officer. Since there is no electoral law clause indicating that reports from all vetting departments must adhere to a definitive timeframe to submit the results, the electoral officer is at the mercy of an undetermined schedule of when the critical information is submitted.

POLLING LOCATION

- **Section 18. POLLING LOCATION** – [new provision to be added] It is recommended that a provision be included in section 18 of the Law whereby the Electoral Officer will

ensure the availability of adequate space for use by the Justice to hear and decide requests for pre-election reviews. Space has been made available for a Justice to hear and decide such requests on Election Day since the institution of the pre-election review process in 2018. Such an amendment would formalize this important practice and require future Electoral Officers to continue making this space available.

- **Section 18. Subsection 18.7** The Electoral Officer will ensure that no fundraising activities will occur at the Polling Location. – [new provision to be added] It is recommended to reconsider fundraising activities.

ELECTION PROCEDURES

- **Section 19 Subsection 19.4** If the Polling Clerk has reason to believe that a person requesting to vote is not an Elector, has already voted or is falsely representing him or herself, the Polling Clerk will refer the Elector to the Electoral Officer who will determine whether the person is entitled to vote. – [new provision to be added] Recommend adding the elector will be referred to the General Manager of Office of Kahnawà:ke Kanien'kehá:ka Registry and the Information Management Technician as this decision must be made based on the facts at hand.

VOTERS LIST

- **Section 20 Subsection 20.1** The **Membership Registrar** will not less than one (1) month before Election Day prepare the Voters List that will be used for the selection of Council Chiefs and Grand Chief. – [new provision to be added] Recommend modifying change to General Manager of Office of Kahnawà:ke Kanien'kehá:ka Registry and change to one (1) week before elections.

VOTING

- **Section 21 Subsection 21.3** 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. – [new provision to be added] Recommend having discussion with the General Manager of Office of Kahnawà:ke Kanien'kehá:ka Registry and possibly the Registrar.
- **Section 21 Subsection 21.4** 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. – Recommend modifying proper terminology.

SPECIAL POLL

- **Section 22. Subsection 22.1** The Electoral Officer will hold one or more special polls not more than ten (10) days prior to Election Day. 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, special polls will be held at senior and healthcare institutions so that the 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. – [new provision to be added] Recommend the addition of a secondary special poll for community members who cannot participate on the set date due to work schedules.

CRITERIA FOR VOTING IN A SPECIAL POLL

- **Section 24. Subsection 24.1 (a)** The Electoral Officer may, at his or her discretion, approve a request from an Elector to cast a ballot in a special poll, if:
 - (a) a written request is received by the Electoral Officer at least forty-eight (48) hours before the time of a special poll; and – [new provision to be added] Recommend increasing to a seventy-two (72) hour timeframe. Most requests are usually submitted last minute, and the increased time frame would help immensely for the Electoral Officer to provide proper authorization.

SPECIAL POLL BALLOTS AND SPECIAL POLL LISTS

- **Section 25 Subsection 25.2** The Electoral Officer will maintain a list of Electors who vote at a special poll and the names of these Electors will be crossed off the copies of the Voters List given to the Polling Clerks on Election Day. – [new provision to be added] To recommend updating the technology to reflect the Election Database.

ELIGIBILITY TO VOTE

- **Section 26 Subsection 26.1** Subject to the other provisions of this Law, to be eligible to vote in an Election, including a special poll, an Elector:
 - (a) must be listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry and must not currently have their benefits and entitlements as a member suspended; – Recommend change to terminology.

- (c) must be listed on or entitled to be listed, as per section 20.2, on the Voters List.
– [new provision to be added] To recommend a review of ‘entitled to be listed’.

COUNTING THE VOTES

- **Section 28 Subsection 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, on-duty Kahnawà:ke Peacekeepers, Candidates who wish to attend the counting of the votes and one (1) representative for each Candidate. – [new provision to be added] Recommend creating a definition for the ‘representative’ with criteria to Section 4 DEFINITIONS.

DECLARATION OF POLL RESULTS

- **Section 30. Subsection 30.2** The terms of office of the incumbent Council will end immediately after the election results are made public. – [new provision to be added]
The newly elected Council’s term of office will begin upon their swearing of the Oath of Office, at which time the incumbent council will relinquish its powers, authorities and responsibilities.

PRE-ELECTION REVIEWS

- **Section 32. Subsection 32.4** Requests for review of a decision of the Electoral Officer are made by the requestor filling out the prescribed form and submitting it to the Court and the review will be decided as expeditiously as possible and in such a manner as not to inhibit the election proceedings. – [new provision to be added] It is recommended that this section clarify that the prescribed form will be established by MCK Justice Services. A standardized request form has assisted requestors with submitting clear and focused requests. This has benefited all those involved in the pre-election review process (requestor, respondent, Justice and court staff). It is not recommended that the content of the form be set by regulation as that would prohibit MCK Justice Services from quickly making any improvements that may be required from election-to-election. It is also recommended that the term “Court” be expanded to “Court of Kahnawà:ke” for purposes of consistency, that the term “inhibit” be replaced with “hinder” and that “election proceedings” be replaced with “election process.” It is further recommended that the methods of submission of the prescribed form be clearly outlined. It is additionally recommended that the process for submitting a request for review on Election Day at the Polling Location be clarified since the offices of the Court of Kahnawà:ke will be closed.

For discussion purposes, an amended section 32.4 of the Law could read as follows:

- **Section 32.4** Requests for review of a decision of the Electoral Officer will be made by completing the review form established by MCK Justice Services and submitting it to the Court of Kahnawà:ke. Submission will be made by one of the following methods:
 - (a) in person at the offices of the Court of Kahnawà:ke;
 - (b) bailiff;
 - (c) registered mail;
 - (d) facsimile transmission; or
 - (e) any other way that reasonably ensures proof of reception.

The review will be decided as expeditiously as possible and in such a manner as not to hinder the election process. Requests for review of a decision of the Electoral Officer on Election Day will be submitted to a representative of the Court of Kahnawà:ke, who will be available at the Polling Location to receive such requests.

- **Section 32. Subsection 32.5** The Justice who reviews the Electoral Officer's decision has discretion on the procedure used to determine the review, provided said procedure is expedient and will not inhibit the election proceedings. – [new provision to be added] It is recommended that the term "inhibit" be replaced with "hinder" and that "election proceedings" be replaced with "election process."

POST-ELECTION APPEALS

- **Section 33. Subsection 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. – [new provision to be added] It is recommended that it be mandatory that appeals be submitted using a form to be established by MCK Justice Services. It is expected that a standardized appeal form would assist appellants with submitting clear and focused appeals. This would benefit all those involved in the appeal process (appellant, respondent, Justice and court staff). It is not recommended that the content of the form be set by regulation as that would prohibit MCK Justice Services from quickly making any improvements that may be required from election-to-election. It is further recommended that the methods of submission of the appeal form be the same as those for pre-election reviews for purposes of consistency.

It is additionally recommended that the timeframe for submitting an appeal be extended from seven (7) days to ten (10) days. The current deadline causes confusion since it falls on the weekend when the offices of the Court of Kahnawà:ke are closed. The Court of Kahnawà:ke would accept appeal submissions until the end of the

following business day, but a new deadline can help resolve these issues concerning the submission deadline.

- For discussion purposes, an amended section 33.2 of the Law could read as follows:

Section 33.2 Appeals will be made by completing the appeal form established by MCK Justice Services and submitting it to the Court of Kahnawà:ke. Submissions will be made by one of the methods listed at section 32.4 (*proposed amendment version). Appeals must be submitted not more than 10 days after Election Day.

- **Section 33. Subsection 33.6** 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. – [new provision to be added] It is recommended that the methods of submission for these written answers, for purposes of consistency, be the same as those proposed for submitting requests for pre-election reviews and post-election appeals.
- **Section 33. Subsection 33.9** 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. – [new provision to be added] It is recommended that the term “Court” be revised to “Court of Kahnawà:ke” for purposes of consistency.

VACANCIES IN COUNCIL

- **Section 34. VACANCIES IN COUNCIL** – [new provision to be added] Should the position of Grand Chief become vacant for any reason at any point in the term, a by-election shall be called to fill the position.
- **Section 34. Subsection 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. – [new provision to be added] Section 34.1 of the Law establishes the parameters for by-elections but is silent as to how an Electoral Officer will be appointed. The recent

practice has been to “re-initiate” the mandate of the Electoral Officer from the prior election. This is a prudent practice that should continue. However, it is recommended that this practice be formalized in the Law, and it be determined what steps will be taken should the Electoral Officer be unavailable to conduct the by-election.

OKKR	Office of Kahnawà:ke Kanien'kehá:ka Registry
GM OKKR	General Manager of Office of Kahnawà:ke Kanien'kehá:ka Registry
KKR	Kahnawà:ke Kanien'kehá:ka Registry
KKL	Kanien'kehá:ka of Kahnawake Law
KRL	Kahnawà:ke Residency Law

All references to the “Registrar” to be changed to the “General Manager of the OKKR”

All references to “member” to be changed to “recognized on the KKR”

All references to include proper terminology from the:

- Kahnawà:ke Kanien'kehá:ka Registry
- Kahnawà:ke Residency Law
- Kanien'kehá:ka of Kahnawà:ke Law