

**MOHAWK COUNCIL OF KAHNAWÀ:KE
DISCIPLINARY MEASURES
REGULATIONS**

K.R.L. c. E-1- r.1

Enacted by MCED #4/2006-2007
Amended by MCED #8/2016-2017
Amended by MCED #30/2017-2018
Amended by MCED #11/2018-2019

TITLE

- 1.1 The title of these Regulations is the “*Mohawk Council of Kahnawà:ke Disciplinary Measures Regulations*”.

JURISDICTION

- 2.1 These Regulations are an exercise of the collective rights of the People of Kahnawà:ke to determine their own disciplinary measures process for the Chiefs of the Mohawk Council of Kahnawà:ke. These Regulations are paramount to and supersede the regulations and policies of the government of Québec, Canada, or any foreign government, concerning matters related to the disciplinary measures process for the Mohawk Council of Kahnawà:ke.

DEFINITIONS

- 3.1 In these Regulations:

“**Arbitrator**” means the person who will hear and decide all complaints referred to it by the Complaints Officer and includes the members of the Administrative Tribunal with Formal legal training.

“**Acting in bad faith**” means doing something that is:

- (a) Dishonest;
- (b) Fraudulent;
- (c) Intentionally designed to harm the best interests of:
 - 1. The People of Kahnawà:ke, their lands, water or other assets; or
 - 2. The Mohawk Council of Kahnawà:ke, its members, employees, agents or assets.

“Alternate Complaints Officer” means the person who replaces the Complaints Officer when the Complaints Officer is unable to act, and who has the qualifications and is selected by the procedure set forth in Annex “A” to the present Regulations.

“Betraying the public trust” means:

- (a) Acting in a manner that is contrary to the best interests of the People of Kahnawà:ke, their lands, water or other assets;
- (b) Allowing a Chief’s personal or financial interests to conflict with the best interests of the People of Kahnawà:ke, their lands, water or other assets, by:
 - 1. Failing to register, declare or disclose that a Chief has a personal or financial interest in any matter that is before Council;
 - 2. Participating in a meeting of Council or other meeting that involves a matter in which a Chief has a personal or financial interest; or
 - 3. Entering into a transaction in which a Chief has a personal or financial interest, when said transaction is in conflict with the interests of the People of Kahnawà:ke, their lands, water or other assets.
- (c) Acting contrary to law the result of which would constitute conduct which would reflect poorly upon the Chief and which would breach the trust placed in the elected Chief by the People of Kahnawà:ke.

“Complaints Officer” means the person receiving complaints by a community member against a Chief of the Mohawk Council of Kahnawà:ke, including the Grand Chief, and who has the qualifications set forth in Annex “A” to the present Regulations and is appointed by the Kahnawà:ke Justice Commission.

“Conduct inconsistent with the responsibilities of their office” means acting in a manner that is contrary to the Chief’s Declaration of Office, the Chief and Council Administration Manual, Regulations for the Operations of Chief and Council, or Working Conditions Agreement.

“Criminal Offense” has the same meaning as that provided for in the *MCK Election Law*.

“Failing to Fulfill the Responsibilities and Duties of Office” means not performing, without reasonable excuse, the functions and obligations that are required of a Chief of the Mohawk Council of Kahnawà:ke, including but not limited to:

- (a) Not attending regularly scheduled meetings of the Mohawk Council of Kahnawà:ke;
- (b) Not attending meetings related to their portfolio;

- (c) Disclosing sensitive or confidential information or materials without the prior approval of the Mohawk Council of Kahnawà:ke.

“Formal legal training” means having completed an undergraduate degree in law at a recognized North American university.

“Mohawk Council of Kahnawà:ke” means the elected representatives of the People of Kahnawà:ke.

“People of Kahnawà:ke” means persons who are listed as a member on the Kahnawà:ke Kanien’kehá:ka Registry, as defined by the Kahnawà:ke Membership Law or any Law which replaces it.

“Personal Interest” means an activity or information that would directly benefit, financially or otherwise, a Chief of the Mohawk Council of Kahnawà:ke, or his/her spouse, brother, sister, parent, child or friend and thus would place a Chief in a situation of potential or actual conflict of interest in relation to the best interests of the Mohawk People of Kahnawà:ke or the Mohawk Council of Kahnawà:ke.

SCOPE

- 4.1 Complaints between Chiefs or between an employee of the MCK and a Chief concerning a work-related matter are not covered by these Regulations.
- 4.2 A Chief of the Mohawk Council of Kahnawà:ke may be subject to this Complaint Procedure, for any of the following reasons:
 - (a) Acting in bad faith;
 - (b) Betraying the public trust;
 - (c) Conduct inconsistent with the responsibilities of their office;
 - (d) Failing to fulfill the responsibilities and duties of their office;
 - (e) No longer meeting the criteria to hold elected office as a Chief; or
 - (f) Being convicted of a criminal offense.

COMPLAINT PROCEDURE

- 5.1 A person, who is listed as a member on the Kahnawà:ke Kanien’kehá:ka Registry and who does not currently have their benefits and entitlements as a member suspended, and who wishes to complain about the conduct of a Chief of the Mohawk Council of Kahnawà:ke may do so in accordance with the following procedure.
- 5.2 Within thirty (30) days of the occurrence or knowledge of the occurrence of the conduct, act or event that is the object of the complaint, the complainant must make

a formal written complaint addressed to the attention of the Complaints Officer and file the complaint with the clerk of the Court of Kahnawà:ke.

- 5.3 In no case will a complaint be received if it is filed more than three (3) years from the occurrence of the conduct, act or event which gives rise to the complaint.
- 5.4 The Court clerk will perform a cursory review of the complaint to ensure that it complies with sections 5.6, 5.7 and 5.8 of these Regulations and if it does comply the Court clerk will stamp the complaint with the date on which it was received and will forward it to the Complaints Officer without delay.
- 5.5 If the complaint does not comply with sections 5.6, 5.7 and 5.8, the Court clerk will advise the complainant of such and that it will not be forwarded to the Complaints Officer until such time as all requirements are met.
- 5.6 The written complaint must include all the facts and circumstances surrounding the conduct, act or event and will at a minimum include:
 - (a) The name of the complainant(s);
 - (b) The name of Chief(s) whose conduct is alleged to be at fault;
 - (c) The name of all the witnesses to the event or occurrence;
 - (d) The date of the event or occurrence or knowledge of the event or occurrence;
 - (e) A summary of the facts and circumstances surrounding the conduct, act, event, or occurrence; and
 - (f) The outcome sought by the complainant(s).
- 5.7 The complaint must be accompanied by an affidavit or solemn affirmation signed by each complainant and attesting to the fact that the complainant is listed as a member on the Kahnawà:ke Kanien'kehá:ka Registry and does not currently have their benefits and entitlements as a member suspended, and that all the facts contained in the complaint are true.
- 5.8 The complaint will also be accompanied by a filing fee of One Hundred (\$100.00) Dollars. If the complaint is ultimately determined to be frivolous, vexatious, or clearly without merit the fee will be used to offset the cost of the initial inquiry. If the complaint is not frivolous, vexatious, or clearly without merit the fee will be reimbursed to the complainant.

RECEIPT OF COMPLAINT, INQUIRY, AND MEDIATION

- 6.1 Upon receipt of the complaint, the Complaints Officer will summarily dismiss any complaint received outside of the delay mentioned in section 5.2 or section 5.3 and will advise the complainant.
- 6.2 If the complaint is not summarily dismissed, the Complaints Officer will immediately conduct an inquiry into the complaint by contacting and interviewing the complainant(s), the Chief(s) whose conduct is the object of the complaint and their respective witnesses.
- 6.3 The focus of the inquiry by the Complaints Officer is to determine whether the complaint is frivolous, vexatious, or clearly without merit. If the complaint is determined to be frivolous, vexatious, or clearly without merit it is rejected and the Complaints Officer will advise the complainant of the decision. A complaint is frivolous, vexatious or clearly without merit, if *prima facie* (on its face) it lacks substance, is hopeless or plainly cannot succeed in its purpose. The decision of the Complaints Officer, even a decision communicated orally to the parties, must be in writing together with the reasons on which it is based. The Complaints Officer's decision will be made public.
- 6.4 Within fifteen (15) days of the receipt of the Complaints Officer's rejection of the complaint as being frivolous, vexatious, or clearly without merit, the complainant may request that the Court of Kahnawà:ke review the Complaints Officer's decision. The decision of the Court of Kahnawà:ke is final and without appeal.
- 6.5 If the Complaints Officer determines that the complaint is not frivolous, vexatious, or clearly without merit, the Complaints Officer will inform the parties of their options concerning mediation mentioned in section 6.6 of these Regulations. The purpose of mediation is to find a settlement that is acceptable to both the complainant and the Chief.
- 6.6 The Complaints Officer may at the request of the parties mediate directly or send the parties to the Skén:nen Aonsón:ton Alternative Dispute Resolution (ADR) process offered through the Kahnawà:ke Justice System.
- 6.7 If the parties refuse the offer of mediation, or if either party withdraws from the mediation process, or if after having accepted the offer of mediation no acceptable solution is found within forty-five (45) days of the start of the mediation process, or ninety (90) days from the start of mediation if the parties agreed to extend the mediation period, the Complaints Officer will refer the complaint to arbitration for adjudication of the issues. The Complaints Officer will do this by forwarding the complaint back to the Court clerk for selection of an Arbitrator.

ADJUDICATION

- 7.1 The Arbitrator will hear and decide all complaints referred to it by the Complaints Officer.

- 7.2 Once the complaint has been referred to arbitration, an Arbitrator will immediately be randomly selected by the clerk of the Court from a pre-established list of qualified arbitrators capable of hearing such complaints.
- 7.3 The Arbitrator must have Formal legal training and not be employed with the Mohawk Council of Kahnawà:ke.
- 7.4 The Arbitrator will ensure that they are not in a conflict of interest. If the Arbitrator believes that a potential conflict of interest may exist, the Arbitrator will discuss the potential conflict with the parties. The parties may, after hearing the Arbitrator, waive their right to recuse the Arbitrator.
- 7.5 If either party reasonably believes that the Arbitrator is in a conflict of interest they must at the earliest opportunity raise this fact with the Arbitrator and request that the Arbitrator remove him or herself from the hearing. If the Arbitrator removes him or herself a replacement will be randomly selected by the Court clerk from a pre-established list of qualified arbitrators capable of hearing such complaints and the hearing will begin.
- 7.6 If, after providing an explanation to the party requesting their removal, the Arbitrator does not remove him or herself, the party may, if they still reasonably believe that there exists a conflict, motion the Court of Kahnawà:ke for a decision and the Court's decision on the matter will be final and without appeal.

PROVISIONAL MEASURES AND SAFEGUARDS

- 8.1 The Arbitrator may, on a party's request, take any provisional measure or any measure to safeguard the parties' rights for the time and subject to the conditions the Arbitrator determines. Such a decision is binding on the parties but one of them may, if necessary, ask the Court to homologate the decision to give it the same force and effect as a judgment of the Court of Kahnawà:ke.
- 8.2 In an urgent situation, even before a request for a provisional or safeguard measure is notified to the other party, the Arbitrator may issue a provisional order for a period which may in no case exceed 20 days.
- 8.3 The provisional order must be notified to the other party as soon as it is issued, with all the evidence attached. It is binding on the parties.

HEARING ON THE MERITS

- 9.1 The Arbitrator will inform the parties in writing of the date, time and place of the hearing of the issues no less than two (2) weeks in advance of the hearing.
- 9.2 The Arbitrator must conduct the hearing in keeping with the duty to act impartially, so as to ensure a fair process.

- 9.3 The Arbitrator is required to give the parties the opportunity to be heard.
- 9.4 The hearings will be recorded in a manner that ensures the accuracy and faithful reproduction of the proceedings and may include stenographic notes or audio recording.
- 9.5 The Arbitrator has full authority over the conduct of the hearing. The Arbitrator shall, in conducting the proceedings, be flexible and ensure that the substantive law is rendered effective and is carried out.
- 9.6 The Arbitrator shall rule on the admissibility of evidence and means of proof and may, for that purpose, follow the ordinary rules of evidence applicable in civil matters. The Arbitrator shall, however, even of his or her own initiative, reject any evidence, which was obtained under such circumstances that fundamental rights, and freedoms were breached and the use of which could bring the administration of justice into disrepute. The use of evidence obtained in violation of the right to professional secrecy is deemed to bring the administration of justice into disrepute.
- 9.7 The Arbitrator must:
- (a) Take measures to clearly define the issue and, where expedient, to promote reconciliation between the parties;
 - (b) Give the parties the opportunity to prove the facts in support of their allegations and to present arguments;
 - (c) Provide, if necessary, fair and impartial assistance to each party during the hearing; and
 - (d) Allow each party to be assisted or represented by legal counsel.

DECISION

- 10.1 Every decision rendered by the Arbitrator must be communicated in clear and concise terms to the parties.
- 10.2 Every decision terminating a matter, even a decision communicated orally to the parties, must be in writing together with the reasons on which it is based.
- 10.3 If the Arbitrator finds that the complaint is well founded it will impose the sanction requested by the complainant or if the Arbitrator believes that such a sanction would be too severe given the evidence, the Arbitrator may impose a lesser sanction, however, in no case may the Arbitrator impose a sanction more severe than that sought by the complainant.
- 10.4 The Arbitrator must render a written decision on the merits of the complaint within sixty (60) days of the end of the hearing of the evidence. The parties may agree to extend this delay by no more than an additional thirty (30) days.

10.5 The decision will be made known to the community of Kahnawà:ke.

JUDICIAL REVIEW

11.1 Within fifteen (15) days of receipt of the Arbitrator's decision rejecting the complaint the complainant may file a motion with the Court of Kahnawà:ke to review the decision. The Court may uphold, cancel or vary the decision of the Arbitrator.

11.2 Where the Arbitrator has determined that the complaint was well founded and has imposed a sanction which is less than a removal from office order, the Chief who is the subject of the sanction may within fifteen (15) days of the receipt of the decision file a motion with the Court of Kahnawà:ke to review the decision.

11.3 In the case of a Chief's request for a judicial review the Court may either:

(a) Uphold the decision of the Arbitrator and the sanction imposed;

(b) Uphold the decision of the Arbitrator but vary the sanction imposed; or

(c) Cancel the decision.

11.4 The Justice of the Court may, as part of his or her decision, order any party to the judicial review to pay some or all of the legal expenses incurred by the other party or parties in the judicial review.

11.5 The decision will be made known to the community of Kahnawà:ke.

11.6 The decision of the Court of Kahnawà:ke on judicial review is final and without appeal.

APPEAL

12.1 Where the Arbitrator has determined that the complaint is well founded and has imposed a removal from office order as the appropriate sanction, the Chief who is the subject of the sanction may within fifteen (15) days of the receipt of the decision file an appeal with the Court of Kahnawà:ke.

12.2 The appeal suspends the execution of the Arbitrator's decision.

12.3 The Court of Kahnawà:ke will hear the appeal with all due dispatch.

12.4 The Justice of the Court may, as part of his or her decision, order any party to the appeal to pay some or all of the legal expenses incurred by the other party or parties in the appeal.

12.5 The decision will be made known to the community of Kahnawà:ke.

12.6 The Court of Kahnawà:ke's decision is final and without further appeal.

GENERAL PROVISIONS

13.1 These Regulations may be amended by Mohawk Council Executive Directive (MCED).

13.2 In computing any period fixed by these Regulations:

- (a) The day which marks the start of the period is not counted, but the terminal day is counted;
- (b) Holidays are counted; but when the last day is a holiday, the period is extended to the next following working day; and
- (c) Saturday is considered a holiday, as are 2 January and 26 December and any other day declared by the Mohawk Council of Kahnawà:ke to be a holiday.

ANNEX “A”

QUALIFICATIONS FOR COMPLAINTS OFFICER AND THE ALTERNATE COMPLAINTS OFFICER AND THEIR APPOINTMENT PROCEDURE

1. The Complaints Officer and Alternate Complaints Officer will be appointed by resolution of the Kahnawà:ke Justice Commission. All references to the Complaints Officer apply also to the Alternate Complaints Officer.
2. The Complaints Officer’s term of Office will be determined by the Kahnawà:ke Justice Commission and it should coincide as closely as possible with the Chiefs’ term of office.
3. There is no limit to the amount of successive terms a Complaints Officer may serve.
4. The Complaints Officer will be selected in accordance with the Procedure for the Selection of the Complaints Officer and Alternate Complaints Officer.
5. The Kahnawà:ke Justice Commission will ensure that each candidate for Complaints Officer will have all the qualifications set forth herein after to be appointed as Complaints Officer.
6. The Complaints Officer:
 - (a) Must be over the age of twenty-one (21) years;
 - (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;
 - (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.
7. In addition to these eligibility requirements the Complaints Officer must also meet the requirements contained in the Terms of Reference for Complaints Officers and must have the skills and experience necessary to deal with complaints in a fair, transparent and accountable manner, as to be evaluated by the Kahnawà:ke Justice Commission.
8. The Complaints Officer will perform the duties set forth in the Disciplinary Measures Regulations on an “as needed” basis.
9. The Complaints Officer’s per diem wage will be fixed by the Executive Office and once fixed may not be diminished during the term of the Complaints Officer’s office.