

**KAN IEN'KEHÁ:KA OF KAHNAWÁ:KE LAW** **KAHNAWÁ:KE**  
**MEMBERSHIP LAW**

K.R.L. c. M-1

[Enacted by MCR # 51/2003-2004 on 10 Kentenhkó:wa/November,2003]  
[Came into force through MCR #41/2004-2005 with the exception of section 7.2, on 27  
Seskehkó:wa/September, 2004]  
[Amended by MCR # 2007-2008 on the 2 Onerahtókha/April 2007]  
[Amended by will of the people MCR # \_\_\_\_\_ on \_\_\_\_\_]

**Comment [KF1]:** The term "membership" in the *Kahnawá:ke Membership Law* causes confusion since the federal band list also uses such terminology. Since the community sets the direction for who can be a Kanien'kehá:ka of Kahnawá:ke the Drafting Team proposes that instead of stating that individuals are "members" of the Kanien'kehá:ka of Kahnawá:ke that the terminology be that they are "recognized" as a Kanien'kehá:ka of Kahnawá:ke. This change would necessitate a new title for the present law.

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

~~As Indigenous Peoples, we have the right to maintain and promote our Kanien'kehá:ka identity including our culture, traditions, language, laws and customs.~~

~~As Indigenous Peoples, we have the collective right to determine our own membership. This right is fundamental to our survival.~~

~~Our rights as Indigenous Peoples have been affirmed in the Two Row Wampum, in other treaties we have entered into with foreign governments and in international covenants and declarations.~~

~~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.~~

~~We have consistently and historically exercised the right to determine our own membership. In recent times, we have been compelled to adopt measures that were necessary to ensure our continued survival as a Kanien'kehá:ka community.~~

~~This Law is another link in the unbroken chain of our historic struggle to survive as Kanien'kehá:ka of Kahnawá:ke. This Law is the result of a lengthy period of discussion and consultation within our community. It is an expression of the will of the Kanien'kehá:ka of Kahnawá:ke and is intended to reflect the values and principles described by the Elders of our community in their statement on membership: Entsitchwahahárahne.~~

~~This Law is an affirmation of our Indigenous and Treaty rights. This Law is essential if we are to survive and to thrive as Indigenous Peoples and as Kanien'kehá:ka of Kahnawá:ke.~~

~~The rights on which this Law is based are collective rights belonging to the Kanien'kehá:ka of Kahnawá:ke. However, the application of this Law will respect the fundamental human rights of all individuals in accordance with the principles of dignity and compassion inherent in Kanien'kehá:ka culture, values and Traditional Law and in accordance with international principles of human rights and natural justice.~~

~~This Law is not intended to take away or diminish any and all rights of the People of the Kanien'kehá:ka Nation or the Rotinohsonnión:we.~~

~~This Law is a step toward the goal of completely replacing foreign laws and authorities that have been imposed upon us without our consent and toward the restoration of Traditional Law within Kahnawá:ke.~~

~~This Law is a declaration of our resolve to unite our strengths to achieve this common goal and by this measure we will strive to ensure the peace and security of future generations of our People and our Territories.~~

~~We recognize that we have been harmed by foreign governments' attempts to undermine our will and ability to survive by dividing our community. We reject the imposition of the Indian Act and of other foreign laws that have presumed to define the principles upon which the membership of our community will be determined. We reject all efforts to assimilate and extinguish our community under the guise of absolute individualism.~~

~~By enacting this Law, we are fulfilling our responsibility to defend our community and our Nation from external threat, and in doing so are securing for future generations the right to survive and to continue living proudly as Kanien'kehá:ka of Kahnawá:ke.~~

We are the Kanien'kehá:ka of Kahnawá: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*, 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 as affirmed in the Two Row Wampum 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, identity traditions, languages and institutions and with respect to our connection to our people, land and resources.

We have consistently and historically exercised the right to determine who is a Kanien'kehá:ka of Kahnawá:ke. This right is fundamental to our survival as a

**Comment [KF2]:** The Drafting Team recommends that the preamble be revised. The first four paragraphs of this proposed preamble is based primarily on the preamble used in the *Kahnawá:ke Family Homes Law* for purposes of consistency and also because that preamble was well drafted.

The Drafting Team also recommends that reference to the rights as Indigenous Peoples as "affirmed in the Two Row Wampum" be included in the preamble. It has been included in the third paragraph of this preamble.

**Comment [KF3]:** The in-force version of this law refers to the Territory as "Kahnawá:ke." This spelling has been changed to "Kahnawá:ke" throughout the text of this draft law. To improve the readability of the present draft law, the Drafting Team has excluded from this document all track changes that indicate this change in spelling.

Kanien'kehá:ka community.

**Comment [KF4]:** The Drafting Team recommends the inclusion of this paragraph, which is based on the references to “survival” in the third and sixth paragraphs of the preamble in the in-force version of the *Kahnawà:ke Membership Law*

This Law is an affirmation of our inherent, Aboriginal and Treaty rights to establish and maintain our own process to determine who is a Kanien'kehá:ka of Kahnawà:ke and to maintain a Kahnawà:ke Kanien'kehá:ka Registry.

**Comment [KF5]:** The Drafting Team recommends the inclusion of this paragraph, which is adapted from the sixth paragraph of the preamble of the *Kahnawà:ke Family Homes Law*.

This Law is an expression of the will of the Kanien'kehá:ka of Kahnawà:ke and is intended to reflect the values and principles described by the Elders of our community in their 1999 statement on membership titled: Entsitewahárahane.

## TITLE

1.1 The title of this Law is the Kanien'kehá:ka of Kahnawà:ke Membership Law.

## PURPOSE

2.1 The general purpose of this Law is more fully described in the Preamble.

2.2 This Law is intended to provide the criteria and procedures for:

- a) identifying those persons who are recognized as members as at birth of the Kanien'kehá:ka of Kahnawà:ke and establishing the entitlements and responsibilities associated with recognition, membership,
- b) determining the recognition membership of persons who are entitled to apply for recognition as a membership of the Kanien'kehá:ka of Kahnawà:ke and to establish the entitlements and responsibilities associated with recognition, membership, and
- c) determining those persons who are eligible to be Approved Kahnawà:ke Residents non member residents of Kahnawà:ke and establish their privileges and obligations, and -
- d) determining the suspension and revocation of recognition as a Kanien'kehá:ka of Kahnawà:ke.

**Comment [KF6]:** This reference to suspension and revocation of recognition is new. The Drafting Team recommends that it be included to further clarify the intent of the law.

## JURISDICTION

3.1 The jurisdiction under which this law is enacted is more fully described in the Preamble.

3.2 This Law is an exercise of the collective rights of the Kanien'kehá:ka of Kahnawà:ke to determine who is recognized as a Kanien'kehá:ka of Kahnawà:ke. our own membership, until such time as the community addresses the issue of citizenship under the Kaianere'kó:wa. This Law is

**Comment [KF7]:** The Drafting Team recommends that the reference to “citizenship under the Kaianere'kó:wa” be removed, since the present law sets directs who can be a Kanien'kehá:ka of Kahnawà:ke while citizenship is a Longhouse process and for the Mohawk Nation to decide.

paramount to and supercedes the laws, regulations and policies of the government of Canada, or any other foreign government, concerning recognition of who is a membership of the Kanien'kehá:ka of Kahnawà:ke, or matters related thereto.

## DEFINITIONS

4.1 For the purposes of this Law and the Regulations,

"**Adoption**" means the legal acceptance of a act or acts of accepting the child of another person as one's own child,

"**Age of majority**" means eighteen (18) years of age,

"Approved Kahnawà:ke Resident" Non-member Resident" means a person who has been confirmed to have permission to reside within the Territory and to receive those privileges as provided in this Law, provided the person's permission to be an Approved Kahnawà:ke Resident non-member resident has not been suspended or revoked,

**Comment [KF8]:** Since the Drafting Team recommends that the term "membership" should be removed from the present draft law the term "non-member resident" will also need to be replaced. The Drafting Team recommends that it be replaced with "Approved Kahnawà:ke Resident."

"**Business relationship**" means persons who have a common financial interest, direct or indirect, in a business venture or enterprise,

"**Child**" means a person human being who has not yet reached his or her age of majority,

"Cohabit" means living with a non-Indigenous person within the Territory,

"**Common-law relationship**" means a conjugal an intimate personal relationship, not solemnized by a marriage ceremony, law or custom, between two persons who have lived together and have been publicly represented as spouses for not less than five (5) years; ~~for not less than one year,~~

**Comment [KF9]:** Consensus reached to amend the definition of "common law" on January 14, 2014. See Record of Discussion 2014-01-14, page 6.

"Community ties" means a person's overall participation in community events, volunteer activities, charitable works, positive contribution to the Kanien'kehá:ka of Kahnawà:ke and maintenance of Family ties,

**Comment [KF10]:** It became necessary, during the course of reviewing this law, for the Drafting Team to define the term "Community Ties." This definition was developed by the Drafting Team.

"**Dependent child**" means a person who has reached his or her age the age of majority but who, as the result of physical or mental limitations, lives with and is cared for by a Kanien'kehá:ka of Kahnawà:ke member parent(s) or guardian(s), or parents,

**Comment [KF11]:** The Drafting Team recommends the inclusion of the term "guardian".

"Elder" means an adult person who is a member of the Kanien'kehá:ka of Kahnawà:ke and who has gained and continues to hold the trust, respect and confidence of the Kanien'kehá:ka of Kahnawà:ke and who has a good knowledge of the customs and Kanien'kéha of the Kanien'kehá:ka of Kahnawà:ke,

**Comment [KF12]:** There was consensus on November 5, 2013 to empower the Registrar to hear and decide those applications, suspensions and revocations that were previously heard and decided by the Council of Elders. The Council of Elders would then no longer be necessary. This change will result in the disbanding of the Council of Elders. As such, the definition of "Elder" is no longer required. This change is reflected throughout the present draft law.

"**Family ties relationship**" means the bond that exists between a person their spouse, sibling, parent, grandparent or child who resides in the Territory,

**Comment [KF13]:** The term "Family relationship" is not used elsewhere in this law. However, the term "Family ties" is used. As such, the Drafting Team recommends that the term "Family relationship" be changed to "Family ties" and that the definition include the bond that exists between a person and their grandparent.

"**Guardian**" means any person, other than a parent of the child, who is under a legal duty to provide for the child,

**Comment [KF14]:** It became necessary, during the course of reviewing this law, to define the term "Guardian". This definition was developed by the Drafting Team.

"**Indigenous**" for the purposes of this Law means persons of an Indigenous Nation that is indigenous to what is currently known as Canada and the United States of America, including the Inuit,

**Comment [KF15]:** There was consensus on June 6, 2013 to include the Inuit in the definition of Indigenous.

"**Indigenous lineage**" means direct descent from at least four (4) Indigenous great-grandparents, verified by proof acceptable to the Registrar and, if necessary, by the Administrative Tribunal, the Court of Kahnawà:ke or the Kahnawà:ke Court of Appeal, as the case may be, the Council of Elders or the Membership Review Council,

"**Instatement**" means recognizing confirming, for the first time, a person to be a ~~member of the~~ Kanien'kehá:ka of Kahnawà:ke in accordance with this Law,

"**Kahnawà:ke Kanien'kehá:ka Registry**" means the list of Kanien'kehá:ka of Kahnawà:ke members and the list of non-member residents maintained by the Registrar in accordance with after the enactment of this Law and, for greater certainty, does not mean any lists kept by the Department of Aboriginal Indian Affairs and Northern Development (Canada) or any other foreign government,

"Kahnawà:ke Kanien'kehá:ka Registry Advisory Board" means the body established to provide non-binding advice and guidance to the Registrar,

"**Kahnawà:ke Mohawk Registry**" means the list of persons created in accordance with the 1981 Moratorium and the 1984 Kahnawà:ke Mohawk Law concerning Membership,

"**Kanien'kehá:ka Great Grandparent**" means a great grandparent who 1) has Kanien'kehá:ka lineage or 2) was a Mohawk on the Mohawk Registry or 3) was/is a member or recognized as a Kanien'kehá:ka of Kahnawà:ke on the Kahnawà:ke Kanien'kehá:ka Registry.

**Comment [KF16]:** There was no consensus on the definition of "Kanien'kehá:ka great grandparent." The Drafting Team recommends the following expansive definition, which is consistent with the lineage-based approach to recognition found within the law.

"**Kanien'kehá:ka lineage**" means direct descent from a Kanien'kehá:ka ancestor, verified by proof acceptable to the Registrar and, if necessary, by the Administrative Tribunal, the Court of Kahnawà:ke or the Kahnawà:ke Court of Appeal, as the case may be, the Council of Elders or the Membership Review Council,

Although there was no consensus on the definition of "great grandparent" there was consensus that the definition of great-grandparent exclude persons who are "acquired status". This definition reflects that decision. See Record of Discussion 2013-06-10, page 4.

"**Kanien'kehá:ka of Kahnawà:ke Member**" means a person verified and recognized as a member at birth or a person who has been confirmed as being a member of the Kanien'kehá:ka of Kahnawà:ke, according to the criteria and

procedures in this Law and the Regulations, provided the person's recognition membership has not been revoked,

"**Kanien'kehá:ka Territory of Kahnawà:ke** " or "**Territory**" means:

- a) the lands under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke, including the Kahnawà:ke interest in Tioweroton (Doncaster);
- b) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke through the negotiation and resolution of land grievances,
- c) any and all lands that may be added to the lands now under the control and jurisdiction of the Kanien'kehá:ka of Kahnawà:ke as a result of any other means, and
- d) lands, which are returned to, Kahnawà:ke as lands within the meaning of subsection 91(24) of the *Constitution Act, 1867*.

"**Marriage**" means a binding union between two consenting persons with legal capacity that is solemnized by ceremony, law or custom and that gives rise to duties and responsibilities that are enforceable in law;

~~"**Member of a Liturgical Society**" includes leadership positions held within well recognized religious orders currently established within the Territory such as, but not limited to, priests, nuns, ministers, preachers and other similar members.~~

"**Non-Indigenous person**" means a person who has no Kanien'kehá:ka or Indigenous lineage,

~~"**Normally Ordinarily resident**" means that a person maintains their permanent home in Kahnawà:ke and includes persons who may be absent for a period of time but who return to Kahnawà:ke on a regular basis from their place of employment, training or schooling and also includes persons who do not reside in Kahnawà:ke due to housing shortages,~~

"**Person**" means a living human being,

~~"**Regulations**" means any the rRegulations enacted pursuant to this Law, including Regulation No. 1 and any Regulation enacted by the Mohawk Council of Kahnawà:ke; Council of Elders in accordance with this Law,~~

"**Reinstatement**" means confirming the recognition membership of a person who was previously removed from the Kahnawà:ke Kanien'kehá:ka Registry,

"**Respect for Mother Earth**" refers to a concept, which mirrors our attachment

**Comment [KF17]:** The Drafting Team recommends that this definition and, by extension, the category of "Member of a liturgical society" for purposes of becoming an Approved Kahnawà:ke Resident (currently termed "Non-member resident" in the *Kahnawà:ke Membership Law*) be deleted due to lack of relevancy.

**Comment [KF18]:** The *Mohawk Council of Kahnawà:ke Election Law* uses the term "ordinarily resident". The Drafting Team recommends that the term "Normally resident" be replaced with "Ordinarily resident" to maintain consistency of terminology between Kahnawà:ke laws.

to earth as our supreme giver of life; as giver of all our nourishment and our needs. The symbolic term Mother Earth is central to our belief and life system and plays an integral role in Kanien'kehá:ka society.

~~"Rotinohsonnión:we" means the People of the Longhouse who are of the Kanien'kehá:ka Nation, also known as "Haudenosaunee".~~

**Comment [KF19]:** The Drafting Team recommends that this definition be deleted since, based on other proposed amendments by the Drafting Team, this term will no longer be referenced elsewhere in the present draft law.

## REGISTRAR

5.1 Upon the enactment of this Law, the Mohawk Council of Kahnawà:ke will, after an open application process, appoint a suitable person to be the Registrar for the purposes of this Law.

5.2 The Registrar's appointment will be effective until:

- a) it is revoked by the Mohawk Council of Kahnawà:ke,
- b) the Registrar resigns, or
- c) the Registrar, for any reason, is unable to perform his or her duties under this Law.

5.3 The Registrar must be:

- a) a ~~mature~~ person of good character,
- b) recognized as a member of the Kanien'kehá:ka of Kahnawà:ke, and
- c) a person who ordinarily ~~normally~~ resides within the Territory.

**Comment [KF20]:** The Drafting Team recommends that the reference to "mature" be removed.

5.4 The Registrar will maintain and administer both the Kahnawà:ke Kanien'kehá:ka Registry and the Approved Kahnawà:ke Resident list, ~~non-member resident list,~~ and perform any duties related thereto.

**Comment [KF21]:** The Drafting Team recommends that there be two (2) separate individual lists maintained by the Registrar. As such, this sentence has been revised to reflect the existence of two separate lists (the Kahnawà:ke Kanien'kehá:ka Registry and also the Approved Kahnawà:ke Resident list).

5.5 The Registrar will:

- a) review and decide applications for instatement, reinstatement or for permission to be an Approved Kahnawà:ke Resident, and
- a)b) review and decide applications to suspend or revoke a person's recognition or to suspend or revoke a person's permission to be an Approved Kahnawà:ke Resident.

5-45.6 The Registrar will at all times:

- a) act fairly, impartially and in accordance with the provisions of this Law and the Regulations,

- b) ensure that all information in his or her possession, including but not limited to the Kahnawà:ke Kanien'kehá:ka Registry, is held in confidence and is not divulged, discussed or released to any person or authority, except with the permission of the person to whom the information relates, as required to verify a person's eligibility for benefits and services, as may be required by access to information laws applicable within the Territory, or in accordance with this Law and the Regulations, and
- c) ensure the information contained in the Kahnawà:ke Kanien'kehá:ka Registry and the ~~non-member resident~~ Approved Kahnawà:ke Resident list is safeguarded from loss, destruction, tampering and unauthorized use.

5.55.7 The Registrar will make available for the review of the Mohawk Council of Kahnawà:ke and ~~members of the~~ Kanien'kehá:ka of Kahnawà:ke during normal business hours, any additions, ~~suspensions to~~ or removals from the Kahnawà:ke Kanien'kehá:ka Registry and the ~~non-member resident~~ Approved Kahnawà:ke Resident list, including the names of the persons added or removed from the Kahnawà:ke Kanien'kehá:ka Registry and the Approved Kahnawà:ke Resident ~~non-member resident~~ list.

#### KAHNAWÀ:KE KANIEN'KEHÁ:KA REGISTRY

- 6.1 The Kahnawà:ke Kanien'kehá:ka Registry is hereby established.
- 6.2 The Kahnawà:ke Mohawk Registry is hereby replaced by the Kahnawà:ke Kanien'kehá:ka Registry.
- 6.3 With the exception of any person who has no Kanien'kehá:ka or Indigenous lineage, all persons who, as of the date on which this section of the Law comes into force, were listed on the Kahnawà:ke Mohawk Registry and who reside in or maintain ties with Kahnawà:ke, will be recognized as members of the Kanien'kehá:ka of Kahnawà:ke and will be listed on the Kahnawà:ke Kanien'kehá:ka Registry.
- 6.4 The Registrar will add to the Kahnawà:ke Kanien'kehá:ka Registry the name of any person who is verified and recognized ~~instated or reinstated as a member~~ under this Law.
- 6.5 The Registrar will remove from the Kahnawà:ke Kanien'kehá:ka Registry the name of any person whose recognition as a Kanien'kehá:ka of Kahnawà:ke membership has been revoked and will make a notation in the Registry of any person member who is suspended.

#### APPROVED KAHNAWÀ:KE RESIDENT LIST ~~NON-MEMBER RESIDENT LIST~~

- 7.1 The Registrar will also keep a list of the names, addresses and telephone

numbers of those persons who have been given permission to be an Approved Kahnawà:ke residents ~~non-member residents~~ and will record any conditions that are attached to that permission. This list will not be considered to be part of the Kahnawà:ke Kanien'kehà:ka Registry and will be updated by the Registrar on a regular basis, as required by this Law and the Regulations.

7.2 A person who has no Kanien'kehà:ka or Indigenous lineage, but whose name appears on the Mohawk Registry, immediately before coming into force of this section of the Law, as a result of having married a Kanien'kehà:ka of Kahnawà:ke member prior to May 22, 1981, will automatically be placed on the Approved Kahnawà:ke Resident ~~non-member residency~~ list by the Registrar provided that:

- a) they are still married and living with that spouse in the Mohawk Territory of Kahnawà:ke;
- b) they are widowed and they are still residing in the Mohawk Territory of Kahnawà:ke.

#### COUNCIL OF ELDERS

~~8.1 There is hereby established a body to be known as the Council of Elders appointed by the community of Kahnawà:ke and enacted by this Law.~~

~~8.2 The Council of Elders will consist of not less than nine (9) and not more than fifteen (15) Elders who are normally resident in Kahnawà:ke, selected in accordance with the procedures set out in the Regulations.~~

~~8.3 The Council of Elders will:~~

- ~~a) review decisions made by the Registrar pursuant to this Law,~~
- ~~b) review and decide applications for instatement, reinstatement or for permission to be a non-member resident,~~
- ~~c) review and decide applications to suspend or revoke a person's membership or to suspend or revoke a person's permission to be a non-member resident,~~
- ~~d) enact Regulations as provided in this Law and~~
- ~~e) oversee the function of the Registrar~~

~~8.4 The Council of Elders will perform its duties in accordance with the provisions of this Law and the Regulations.~~

~~8.5 The Council of Elders, in performing its duties, conducting its meetings and~~

**Comment [KF22]:** There was consensus on June 19, 2013 that the Council of Elders name be retired. In light of the consensus on November 5, 2013 to empower the Registrar to process all applications for membership (to be termed "recognition"), suspension and non-members residents (to be termed "Approved Kahnawake Residents") the Council of Elders is no longer required and would be disbanded.

However, there was consensus to implement a "Membership Review Committee" (since titled the Kahnawà:ke Kanien'kehà:ka Registry Advisory Board).

~~making its decisions will respect the principles of fairness, dignity of the person, compassion and consensus that are consistent with the traditions and customs of the Kanien'kehá:ka of Kahnawá:ke.~~

8.6 ~~The members of the Council of Elders will be remunerated for their services in an amount to be established by the Mohawk Council of Kahnawá:ke.~~

8.7 ~~The Mohawk Council of Kahnawá:ke will provide funds to the Council of Elders for the purpose of establishing and maintaining its office and support staff as may be required for the Council of Elders to perform its duties under this Law and the Regulations. The Council of Elders will submit to the Mohawk Council of Kahnawá:ke an annual budget for its approval.~~

8.8 ~~The Council of Elders will create and maintain a record of its proceedings, any decisions it makes and the reasons for its decisions.~~

8.9 ~~Any person who is a member of the Membership Review Council is not eligible to be a member of the Council of Elders.~~

#### KAHNAWÀ:KE KANIEN'KEHÁ:KA REGISTRY ADVISORY BOARD

**Comment [KF23]:** There was consensus to implement a "Membership Review Committee" (since titled the Kahnawá:ke Kanien'kehá:ka Registry Advisory Board). The intended role of this committee was unclear. The Drafting Team recommends that it be an advisory body and, upon request by the Registrar, provide non-binding advice and guidance.

8.1 There is hereby established a body to be known as the Kahnawá:ke Kanien'kehá:ka Registry Advisory Board.

8.2 The Kahnawá:ke Kanien'kehá:ka Registry Advisory Board will consist of five (5) Kanien'kehá:ka of Kahnawá:ke who are ordinarily resident in Kahnawá:ke. Three (3) Kanien'kehá:ka of Kahnawá:ke will be elected, in accordance with the procedures set out in the Regulations, to a three (3) year term. Two (2) Kanien'kehá:ka of Kahnawá:ke will be appointed by the Mohawk Council of Kahnawá:ke to serve a three (3) year term concurrent with those elected, and will be selected in accordance with the procedures set out in the Regulations.

8.3 The Kahnawá:ke Kanien'kehá:ka Registry Advisory Board will, upon request by the Registrar, provide non-binding advice and guidance to the Registrar.

8.4 The Kahnawá:ke Kanien'kehá:ka Registry Advisory Board will perform its duties in accordance with the provisions of this Law and the Regulations.

8.5 The Kahnawá:ke Kanien'kehá:ka Registry Advisory Board is a volunteer Board. Members will not be remunerated for their services.

#### REVIEW OF REGISTRAR'S DECISION

**Comment [KF24]:** The Drafting Team recommends the following process be used as it pertains to the review of the Registrar's decisions. A decision by the Registrar may be reviewed by the Administrative Tribunal, with an appeal of the decision by the Administrative Tribunal to the Court of Kahnawá:ke and also a further appeal to the Kahnawá:ke Court of Appeal.

9.1 A decision by the Registrar may be reviewed by the Administrative Tribunal in

accordance with the *Kahnawà:ke Justice System* and applicable regulations.

9.2 The Administrative Tribunal shall review and determine whether due process was followed, whether laws of natural justice were adhered to, ensure absence of bias, ensure the decision was reasonable, determine whether there was an absence of jurisdiction, or, if there was a mistake of law.

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

9.4 A decision by the Administrative Tribunal may be appealed to the Court of Kahnawà:ke in accordance with the *Kahnawà:ke Justice System* and applicable regulations.

9.5 Final judgments or orders by the Court of Kahnawà:ke regarding membership can be automatically appealed to the Kahnawà:ke Court of Appeal.

#### **MEMBERSHIP REVIEW COUNCIL**

10.1 Until such time as the *Kahnawà:ke Justice System* is implemented and the Administrative Tribunal is operational, decisions by the Registrar may be reviewed by the Membership Review Council on an interim basis in accordance with this Law and the *Regulation Respecting the Membership Review Council*.

10.2 ~~9.1~~ There is hereby established a body to be known as the Membership Review Council empowered by the Mohawk Council of Kahnawà:ke, through the enactment of this Law.

~~9.2~~ The Membership Review Council will consist of three (3) Elders, selected in accordance with the procedures set out in the Regulations.

10.3 The Membership Review Council will consist of three (3) members, selected in accordance with the procedures set out in the *Regulation Respecting the Membership Review Council*.

~~9.3~~ Any person who is a member of the Council of Elders is not eligible to be a member of the Membership Review Council.

10.4 The Membership Review Council shall review and determine whether due process was followed, whether laws of natural justice were adhered to, ensure absence of bias, ensure the decision was reasonable, determine whether there was an absence of jurisdiction, or, if there was a mistake of law.

10.5 The Membership Review Council may confirm, vary or quash the contested decision and, if appropriate, make the decision which, in its opinion, should have

**Comment [KF25]:** In light of the *Kahnawà:ke Justice System* there will no longer be a need for a Membership Review Council. However, since the present draft amendments may be enacted before the *Kahnawà:ke Justice System* is enacted the Drafting Team recommends that the Membership Review Council be retained on a temporary (and modified) basis for the purposes of reviewing decisions by the Registrar. Note that changes must be made to the Membership Review Council to reflect the modified role that it would undertake and the other changes in the present draft law.

**Comment [KF26]:** The *Regulation Respecting the Membership Review Council* will need to be developed.

been made initially.

10.6 A decision by the Membership Review Council may, upon implementation of the Kahnawà:ke Justice System and applicable regulations, be appealed to the Court of Kahnawà:ke.

~~9.4~~ If requested to do so, the Membership Review Council will review a decision made by the Council of Elders, in accordance with the procedures set out in the Regulations.

~~9.5~~ The Membership Review Council will perform its duties in accordance with the provisions of this Law and the Regulations.

~~10.7~~ ~~9.6~~ The Membership Review Council, in performing its duties, conducting its \_\_\_\_\_ meetings and making its decisions will respect the principles of fairness, dignity \_\_\_\_\_ of the person, compassion and consensus that are consistent with the traditions \_\_\_\_\_ and customs of the Kanien'kehá:ka of Kahnawà:ke.

~~10.8~~ ~~9.7~~ The members of the Membership Review Council will be remunerated for their services in an amount to be established by the Mohawk Council of Kahnawà:ke.

~~10.9~~ ~~9.8~~ The Mohawk Council of Kahnawà:ke will, until such time as the Administrative Tribunal is operational, fund the Membership Review Council. ~~provide funds to the Membership Review Council for the purpose of establishing and maintaining an office and support staff as may be required for the Membership Review Council to perform its duties under this Law and the Regulations.~~ The Membership Review Council will submit to the Mohawk Council of Kahnawà:ke an annual budget for its approval.

~~10.10~~ ~~9.9~~ The Membership Review Council will create and maintain a record of its proceedings, any decisions it makes and the reasons for its decisions.

## VERIFICATION OF RECOGNITION MEMBERSHIP

~~11.1~~ ~~10.1~~ A person ~~is a member at birth of the~~ shall be recognized as a Kanien'kehá:ka of Kahnawà:ke ~~if he or she is identified as a Kanien'kehá:ka of Kahnawake and upon verification that~~ ~~if~~ he or she satisfies the following criteria:

- a) is born of two Kanien'kehá:ka of Kahnawà:ke members, and
- b) has four (4) or more Kanien'kehá:ka great-grandparents,
- c) ~~is identified as having, or is willing to avail themselves of the established Kahnawà:ke process of affiliation in seeking a Kanien'kehá:ka clan.~~

~~11.2~~ ~~10.2~~ A person ~~is~~ shall be recognized as a ~~is a member at birth of the~~ Kanien'kehá:ka of Kahnawà:ke if he or she is identified as a

**Comment [KF27]:** The Drafting Team recommends that this heading be revised to clarify that this section concerns those individuals who are recognized as Kanien'kehá:ka of Kahnawà:ke without having to complete the application process set out at section 12 of the present draft amended law.

**Comment [KF28]:** There was consensus to maintain the standard of requiring four (4) or more Kanien'kehá:ka great-grandparents on May 9, 2013. See Record of Discussion 2013-05-9, page 4.

**Comment [KF29]:** There was consensus on June 6, 2013 that this requirement be deleted and moved into the Pledge and Oath of Respect. This requirement has been deleted from all categories that included it.

Kanien'kehá:ka of Kahnawà:ke and upon verification that if he or she satisfies all of the following criteria:

- a) is born of one Kanien'kehá:ka of Kahnawà:ke member,
- b) is born of the other person who is Indigenous ~~Mohawk, Oneida, Onondaga, Cayuga, Seneca or Tuscarora~~ (verified by proof acceptable to the Registrar),
- c) has four (4) or more great-grandparents who are Indigenous, Mohawk, Oneida, Onondaga, Cayuga, Seneca or Tuscarora,
- ~~d) is identified as having, or is willing to avail themselves of the established Kahnawà:ke process of seeking a Kanien'kehá:ka clan, and~~
- e) d) is not on another Indigenous community membership list.

**Comment [KF30]:** There was consensus on June 6, 2013 to broaden the requirement from an Iroquois parent to an Indigenous parent with verifiable proof.

**Comment [KF31]:** There was consensus to maintain the standard of requiring four (4) or more Indigenous great-grandparents on April 24, 2013. See Record of Discussion 2013-04-24, page 6.

10.3

~~A person whose name does not appear on the Mohawk Registry as a result of having married a non-Indigenous person prior to May 22<sup>nd</sup>, 1981, but who otherwise would qualify to be a member under section 10.1 of this Law is eligible to apply to be instated.~~

**Comment [KF32]:** The Drafting Team recommends that that this provision, with the necessary changes, be moved into the Instatement and Reinstatement section. This provision can now be found at section 13.2.

### APPLICATION PROCESS/ RECOGNITION MEMBERS

11.1 ~~Every child, through their parent or guardian, is eligible to apply to become a member at birth if he or she is identified as a Kanien'kehá:ka of Kahnawà:ke and if he or she satisfies all of the following criteria:~~

**Comment [KF33]:** The Drafting Team recommends that this section be deleted since the eligibility requirements listed now comprise part of section 11.2

- ~~a) is born of one member,~~
- ~~b) is born of the other person who has Indigenous lineage,~~
- ~~c) has four (4) or more Indigenous great-grandparents,~~
- ~~d) is identified as having, or is willing to avail themselves of the established Kahnawà:ke process of seeking a Kanien'kehá:ka clan, and~~
- ~~e) who is not on another Indigenous community membership list.~~

12.1 ~~11.2~~

Every child, through their parent(s) or guardian(s), is entitled to apply to be recognized as a Kanien'kehá:ka of Kahnawà:ke ~~become a member at birth if he or she is identified as a Kanien'kehá:ka of Kahnawake and~~ if he or she satisfies all of the following criteria:

- a) is born of one Kanien'kehá:ka of Kahnawà:ke and one Indigenous parent ~~two members, one of which~~ who denies filiation with the

child but for whom proof of filiation and lineage acceptable to the Registrar has been submitted, whose lineage is acceptable to the Council of Elders,

- b) has four (4) or more Kanien'kehá:ka great-grandparents or a combination of four (4) or more Kanien'kehá:ka and Indigenous great-grandparents,
- ~~e) is identified as having, or is willing to avail themselves of the established Kahnawá:ke process of affiliation in seeking a Kanien'kehá:ka clan, and~~
- d) who is not on another Indigenous community membership list.

**Comment [KF34]:** The Drafting Team recommends that so that there at least be some connection (lineage) to Kahnawá:ke.

~~12.2~~ 11.3 Every child, through their parent(s) or guardian(s), is entitled to apply to be recognized as a Kanien'kehá:ka of Kahnawá:ke ~~to become a member at birth if he or she is identified as a Kanien'kehá:ka of Kahnawá:ke and if he or she satisfies all of the following criteria:~~

- a) is born of one Kanien'kehá:ka of Kahnawá:ke parent and another, member, is born of the other person who is not recognized as a Kanien'kehá:ka of Kahnawá:ke but has a non-member resident with some Kanien'kehá:ka or Indigenous lineage,
- b) has four (4) or more Kanien'kehá:ka great-grandparents or a combination of four (4) or more Kanien'kehá:ka and Indigenous great-grandparents,
- ~~e) has four (4) or more great-grandparents with Indigenous lineage,~~
- ~~d) is identified as having, or is willing to avail themselves of the established Kahnawá:ke process of affiliation in seeking a Kanien'kehá:ka clan, and~~
- ~~e)c) who is not on another Indigenous community membership list.~~

**Comment [KF35]:** The Drafting Team recommends that the former section 11.3(a) and (b) of the *Kahnawá:ke Membership Law* be merged for ease of reference.

~~12.3~~ 11.4 A person who is not born of two (2) Kanien'kehá:ka of Kahnawá:ke members, or who has one parent who is not Indigenous, is eligible to apply for recognition as a membership of the Kanien'kehá:ka of Kahnawá:ke, at the age of eighteen (18) if he or she satisfies the following criteria:

- a) has at least four (4) Indigenous Kanien'kehá:ka great-grandparents, with at least two (2) being recognized as Kanien'kehá:ka of Kahnawá:ke,
- ~~b) speaks, or is committed to learning Kanien'kehá,~~
- ~~e) respects mother earth,~~

**Comment [KF36]:** There was consensus on June 6, 2013 that this requirement be deleted and moved into the Pledge and Oath of Respect. This requirement has been deleted from all categories that had included it.

**Comment [KF37]:** There was consensus on June 6, 2013 that this requirement be deleted and moved into the Pledge and Oath of Respect. This requirement has been deleted from all categories that had included it.

~~d) is identified as having, or is willing to avail themselves of the established Kahnawà:ke process of affiliation in seeking a Kanien'kehá:ka clan,~~

~~e)b) has and maintains Community ties with the community of Kahnawà:ke, and~~

~~f) honors the customs and traditions, and must comply with the codes, laws and regulations of the Kanien'kehá:ka of Kahnawà:ke.~~

**Comment [KF38]:** There was consensus on June 6, 2013 that this requirement be deleted and moved into the Pledge and Oath of Respect. This requirement has been deleted from all categories that had included it.

~~12.4 11.5~~ In the event of a dispute, the ~~Administrative Tribunal Council of Elders~~ will decide whether a person's great-grandparent(s) were, for the purposes of this Law, a Kanien'kehá:ka of Kahnawà:ke.

~~12.5 11.6~~ A person who has Indigenous lineage but who has little or no Kanien'kehá:ka lineage may apply to the ~~Registrar Council of Elder~~ to be recognized confirmed as a ~~member of the~~ Kanien'kehá:ka of Kahnawà:ke if he or she satisfies all of the following criteria:

~~a) is married to, or living in a common-law relationship for at least five (5) years with, a Kanien'kehá:ka of Kahnawà:ke member,~~

~~b) speaks, or is committed to learning Kanien'kéha,~~

~~c) respects Mother Earth,~~

~~d) is identified as having, or is willing to avail themselves of the established Kahnawà:ke process of affiliation in seeking a Kanien'kehá:ka clan,~~

~~e)b) has and maintains ties with the community of Kahnawà:ke,~~

~~f)c) be an Approved Kahnawà:ke Resident.~~

~~g) honors the customs and traditions, and must comply with the codes, laws and regulations of the Kanien'kehá:ka of Kahnawà:ke, and~~

~~h)d) is committed to raising their children to honor the customs, traditions, codes, laws and regulations of the Kanien'kehá:ka of Kahnawà:ke and must be committed to having their children learn Kanien'kéha.~~

**Comment [KF39]:** The Drafting Team recommends a requirement that any person who has Indigenous lineage (but little or no Kanien'kehá:ka lineage) must first be an Approved Kahnawà:ke Resident before applying for recognition as a Kanien'kehá:ka of Kahnawà:ke.

**Comment [KF40]:** The Drafting Team recommends that this criteria be deleted moved into the Pledge and Oath of Respect.

~~12.6 11.7~~ The application of persons mentioned in sections ~~12.3 11.4~~ and ~~12.5 11.6~~ will be carefully reviewed by the ~~Registrar Council of Elders~~. Notwithstanding section ~~16.1 15.1~~, in the event the application is approved, the ~~Registrar Council of Elders~~ may impose such reasonable conditions, limitations or restrictions, on an individual basis, on the member that is deemed they deem appropriate.

~~12.7 11.8~~ When an individual is recognized as a Kanien'kehá:ka of Kahnawà:ke, ~~the~~

~~Council of Elders or the Membership Review Council confirms a person's membership~~, the Registrar will ~~be advised to~~ make the necessary amendments to the Kahnawà:ke Kanien'kehá:ka Registry.

~~12.8 11.9~~ Recognition Membership as a Kanien'kehá:ka of Kahnawà:ke, and the entitlements associated with recognition membership, are not transferable to another person or entity.

## INSTATEMENT AND REINSTATEMENT

~~13.1 12.4~~ Subject to section ~~13.2 10.3~~, persons whose names are not listed on the Kanien'kehá:ka Registry ~~may apply to the Registrar and who are eligible to apply for membership, may apply to the Council of Elders, with a copy to the Registrar, for recognition, instatement or reinstatement, as members.~~

~~13.2~~ A person whose name does not appear on the Kahnawà:ke Kanien'kehá:ka Registry as a result of having married a non-Indigenous person prior to May 22nd, 1981, but who otherwise would qualify to be recognized as a Kanien'kehá:ka of Kahnawà:ke under section 11.1 10.1 of this Law is eligible to apply to be instated.

~~13.3 12.2~~ Applications for ~~recognition instatement or reinstatement~~ must be in the required form and will be subject to the procedures provided in the Regulations.

## ADOPTED CHILDREN

~~14.1~~ Kanien'kehá:ka of Kahnawà:ke who have adopted a child will have the child's biological lineage verified by the Registrar.

~~14.2~~ The Registrar will determine whether the child is a Kanien'kehá:ka of Kahnawà:ke as defined in sections 11.1 or 11.2 of the Law.

~~14.3~~ If the Registrar determines that the child is not a Kanien'kehá:ka of Kahnawà:ke under the provisions of section 11.1 or 11.2 of the Law, the Registrar will then determine whether the child is eligible to apply to become recognized as a Kanien'kehá:ka of Kahnawà:ke under the provisions of section 12.1 to 12.2 of the Law.

~~14.4~~ If the Registrar determines that the child is not to be recognized under the provisions of section 12.1 to 12.2 of the Law, the Registrar will then determine whether the child is eligible to apply for recognition under the provisions of section 12.3 or 12.5.

~~14.5~~ Once the child's lineage is verified the child's right and eligibility to have their name registered on the Kahnawà:ke Kanien'kehá:ka Registry will follow the same rules and procedures as persons who are not adopted. For greater clarity, it

**Comment [KF41]:** The Drafting Team recommends that the adoption section be amended to clarify the process to be used by the Registrar and to better ensure that all children with similar lineage are treated equally as it concerns recognition as a Kanien'kehá:ka of Kahnawà:ke.

is the intent of this Law that adopted persons and non-adopted persons who have similar lineage are afforded the same rights and obligations under the provisions of this Law.

14.6 A child who has no Kanien'kehá:ka or Indigenous lineage who is adopted by a Kanien'kehá:ka of Kahnawà:ke parent(s) is not eligible for recognition. However, provided the child is adopted prior to the enactment of this Law on November 10, 2003, he or she is entitled to reside within the Territory with his or her adoptive Kanien'kehá:ka of Kahnawà:ke parent(s) and to receive educational services within the Territory until he or she reaches his or her Age of majority, after which he or she may apply for permission to be an Approved Kahnawà:ke Resident.

14.7 A child who has no Kanien'kehá:ka or Indigenous lineage adopted by a Kanien'kehá:ka of Kahnawà:ke parent(s) after the enactment of this Law on November 10, 2003 is not eligible to be recognized as a Kanien'kehá:ka of Kahnawà:ke or be an Approved Kahnawà:ke Resident.

~~13.1 A child who is adopted by a member or members is deemed to be a member for all purposes of this Law, from the date on which the child is adopted until he or she reaches his or her age of majority, provided the child:~~

- ~~a) has at least four (4) great grandparents with Kanien'kehá:ka or Indigenous lineage, and~~
- ~~b) normally resides within the Territory under the care and protection of his or her adoptive member parent or guardian.~~

~~13.2 Upon reaching his or her age of majority, an adopted child referred to in section 13.1 will only continue to be a member, and to be entitled to the benefits and services associated with membership, if, within one year of reaching his or her age of majority, he or she reaffirms the Member's Pledge following the procedures set out in the Regulations. Failure to do so may result in the revocation of that person's membership.~~

~~13.3 The adopted child of a member or members who has some Kanien'kehá:ka or Indigenous lineage but who has fewer than four (4) great grandparents with Kanien'kehá:ka or Indigenous lineage, is entitled to reside within the Territory with his or her adoptive member parent or parents and to receive educational services within the Territory until he or she reaches his or her age of majority, after which he or she may apply for instatement or reinstatement in accordance with this Law or for permission to be a non-member resident.~~

~~13.4 A child who has no Kanien'kehá:ka or Indigenous lineage who is adopted by a member or members is not eligible for membership. However, provided the child is adopted prior to the enactment of this Law, he or she is entitled to reside within the Territory with his or her adoptive member parent or parents~~

and to receive educational services within the Territory until he or she reaches his or her age of majority, after which he or she may apply for permission to be a non-member resident.

13.5 ~~A child who has no Kanien'kehá:ka or Indigenous lineage adopted by a member or members after the enactment of this Law is not eligible to be a member or to be a non-member resident.~~

#### APPLICATION PROCESS/APPROVED KAHNAWÀ:KE RESIDENTS

15.1 ~~14.1~~ All persons who are not eligible to be recognized as a Kanien'kehá:ka of Kahnawà:ke that who wish to reside within the Territory must apply. The following persons are eligible to apply to the Registrar Council of Elders for permission to be an Approved Kahnawà:ke Resident and must meet the following criteria, verified by proof acceptable to the Registrar non-member resident:

**Comment [KF42]:** The Drafting Team revised this provision to improve clarity and make clear that there is a process for an individual to follow in order to become an Approved Kahnawà:ke Resident.

- a) a person who has some Kanien'kehá:ka lineage and,
  - I) who has and maintains ~~F~~ family ties within the community of Kahnawà:ke, and
  - II) who can demonstrate that they have ~~has~~ made or can make a positive contribution to the community of Kahnawà:ke,
- b) a person who has Indigenous but no Kanien'kehá:ka lineage and is married to, or living in a common law relationship with, a recognized Kanien'kehá:ka of Kahnawà:ke,
  - ~~I) married to, or living in a common law relationship with, a member, or~~
  - ~~II) working within the Territory, or~~
  - ~~III) attending an educational facility in or near the Territory,~~
- c) a person with no Kanien'kehá:ka or Indigenous lineage who was adopted as a child prior to the enactment of this Law by a Kanien'kehá:ka of Kahnawà:ke member or members and:
  - I) has reached his or her age of majority,
  - II) has been normally resident within the community of Kahnawà:ke since the date on which he or she was adopted, and
  - III) has and maintains family ties within the community of

**Comment [KF43]:** The Drafting Team recommends that these two categories be removed since working within the Territory or attending an educational facility in or near the Territory is an insufficient link to the Territory to support residency.

Kahnawà:ke,

d) a person with no Kanien'kehá:ka or Indigenous lineage who, prior to the enactment of this Law on November 10, 2003, was raised in the community of Kahnawà:ke, is ordinarily resident in Kahnawà:ke and who maintains ffamily ties with the community.;

**Comment [KF44]:** The Drafting Team recommends the inclusion of this additional requirement in order to strengthen the link to Kahnawà:ke and to ensure that applicants raised in the community remain ordinarily resident in Kahnawà:ke.

~~e) a member of a liturgical society established within the Territory.~~

~~15.2 14.2~~ A person who has no Kanien'kehá:ka or Indigenous lineage, and wishes to reside on the Territory of Kahnawà:ke and is married, prior to May 22, 1981, to someone who is recognized as a Kanien'kehá:ka of Kahnawà:ke has met the qualifications required to become a member under Section ~~13.2~~ 10.3 is required to apply to become an Approved Kahnawà:ke Resident non member resident if:

a) their spouse is recognized as a Kanien'kehá:ka of Kahnawà:ke; a member; and,

b) they are still married to and residing with that spouse, and

c) has and maintains ties with the community of Kahnawà:ke.

~~15.3 14.3~~ Applications for permission to be an Approved Kahnawà:ke Resident non member resident of Kahnawà:ke will be in the required form and will be subject to the procedures provided in the Regulations.

#### ENTITLEMENTS OF KANIEN'KEHÁ:KA OF KAHNAWÀ:KE MEMBERS

~~16.1 15.1~~ Subject to Kahnawà:ke's laws, regulations and policies, members of the Kanien'kehá:ka of Kahnawà:ke have the following, entitlements, and privileges with regards to benefits and services, to the extent they are available.

**Comment [KF45]:** The Drafting Team recommends that this qualifier be included in order to clarify that there may be instances where an entitlement or privilege may not be available.

~~a) to reside within the Territory,~~

~~b) to participate in the selection of Kahnawà:ke leaders,~~

~~c) to seek and hold a leadership position,~~

~~d) to own and transfer to other members, interests in lands within the Territory,~~

~~e) to receive education services,~~

- f) ~~to own and operate a business,~~
- g) ~~to receive housing assistance,~~
- h) ~~to receive services from social, health, welfare and economic departments or programs of the Mohawk Council of Kahnawà:ke,~~
- i) ~~to be buried on land within the Territory.~~

**Comment [KF46]:** The Drafting Team recommends that the listing of entitlements and privileges with regards to benefits and services be deleted. The intent of this amended draft law is to provide the criteria and procedures for becoming a Kanien'kehá:ka of Kahnawà:ke, not to set out entitlements and privileges. Also, the rules for many of these entitlements and privileges are enumerated elsewhere (such as in other Kahnawà:ke laws and policies).

**PRIVILEGES OF APPROVED KAHNAWÀ:KE RESIDENTS NON-MEMBER RESIDENTS**

17.1 16.1 ~~Approved Kahnawà:ke Residents Non-member residents~~ may have the following privileges:

- a) reside within the Territory, and
- b) receive such public services, to the extent they are available, that are ~~necessarily~~ ordinarily associated with residency. The Administrative Tribunal Council of Elders will decide any disputes that may arise as to whether a particular service is, or should be, available to an Approved Kahnawà:ke Resident. ~~non-member resident.~~

**Comment [KF47]:** The Drafting Team has included this reference to "public" in order to clarify that it is *public services* that may be received.

17.2 16.2 Services provided to an Approved Kahnawà:ke Resident ~~non-member residents~~ may be subject to reasonable fees or charges.

17.3 16.3 Other than those matters for which permission has been granted, an Approved Kahnawà:ke Resident ~~non-member resident~~ is not entitled to receive any other benefit or service to which a Kanien'kehá:ka of Kahnawà:ke member is entitled.

**RESPONSIBILITIES OF KANIEN'KEHÁ:KA OF KAHNAWÀ:KE MEMBERS**

18.1 17.1 All ~~members of the~~ Kanien'kehá:ka of Kahnawà:ke have the responsibility to:

- a) honor the customs ~~and~~ traditions of the Kanien'kehá:ka of Kahnawà:ke, and must comply with the codes, laws and regulations applicable in the Mohawk Territory of Kahnawà:ke of the Kanien'kehá:ka of Kahnawà:ke including but not limited to the Kanien'kéha law,
- b) respect and protect Mother Earth,

**Comment [KF48]:** The Drafting Team recommends that this responsibility be strengthened to not only including respecting Mother Earth but also protecting it.

- c) contribute to the preservation and advancement of the community of Kahnawà:ke, ~~the Kanien'kehá:ka Nation and the Rotinohsonnión:we people,~~
- d) is identified as having, or is willing to avail themselves of the established Kahnawà:ke process of affiliation in seeking a Kanien'kehá:ka clan.
- e) respect and protect children, persons, personal property and lands within the Territory,
- f) respect and encourage the use of Kanien'kéha and Kanien'kehá:ka culture, and
- g) maintain Community ties with ~~the community of~~ Kahnawà:ke.

**Comment [KF49]:** Since this law is specific to Kahnawà:ke, the Drafting Team recommends the deletion of this reference to the "Kanien'kehá:ka Nation and the Rotinohsonnión:we people".

#### **OBLIGATIONS OF APPROVED KAHNAWÀ:KE RESIDENTS NON-MEMBER RESIDENTS**

19.1 48.1 All Approved Kahnawà:ke Residents non-member residents have the obligation to:

- a) honor the customs and , traditions of the Kanien'kehá:ka of Kahnawà:ke, and must comply with the codes, laws and regulations applicable in the Mohawk Territory of Kahnawà:ke, ~~of the Kanien'kehá:ka of Kahnawà:ke,~~
- b) respect and protect Mother Earth,
- c) respect and protect children, persons, personal property and lands within the Territory, and
- d) respect and encourage Kanien'kéha and Kanien'kehá:ka culture.

#### **MEMBER'S KANIEN'KEHÁ:KA OF KAHNAWÀ:KE PLEDGE AND OATH OF RESPECT**

20.1 49.1 Any person who is eligible to be recognized ~~instated or reinstated~~ as a Kanien'kehá:ka of Kahnawà:ke member, will swear or solemnly affirm a Kanien'kehá:ka of Kahnawà:ke Pledge and Oath of Respect, Member's Pledge, in the form provided in the Regulations, affirming that:

- a) he or she will respect the responsibilities of a Kanien'kehá:ka of Kahnawà:ke, member, as set out in this Law, and
- b) he or she will respect all conditions, limitations or restrictions, if

**Comment [KF50]:** In light of the removal of all references to "membership" in this document, the Drafting Team recommends that the name of the Pledge and Oath of Respect be changed to reflect these proposed amendments.

any, associated with ~~recognition. membership.~~

~~20.2 19.2~~ Any person who is eligible to be given permission to be an Approved Kahnawà:ke Resident ~~non-member resident~~ will swear or solemnly affirm an Oath of Respect, in the form provided in the Regulations, affirming that:

- a) he or she will respect the Approved Kahnawà:ke Resident ~~non-member resident~~ obligations set out in this Law, and
- b) he or she will respect all conditions, limitations or restrictions associated with being an Approved Kahnawà:ke Resident, ~~non-member resident.~~

## SUSPENSION AND REVOCATION

~~21.1 20.1~~ A Kanien'kehá:ka of Kahnawà:ke ~~member~~ who:

- a) married, or marries, a non-Indigenous person after May 22, 1981, or
- b) commenced, or commences, after May 22, 1981, a common-law relationship with a non-Indigenous person, or person who has no Kanien'kehá:ka or Indigenous lineage,
- c) cohabits, within the Mohawk Territory of Kahnawà:ke, after May 22, 1981, with a non-Indigenous person for more than 30 days in a calendar year, or
- d) allows a non-Indigenous person to reside on their property.

will have their entitlement to receive any of the benefits and services to which they would otherwise be entitled as a ~~member of the~~ Kanien'kehá:ka of Kahnawà:ke, suspended for so long as they remain married, ~~or~~ in a common-law relationship with or cohabiting with a non-Indigenous person or allows a non-Indigenous person to reside on their property. ~~with the non-Indigenous person.~~

~~21.2 20.2~~ Notwithstanding section ~~21.1 20.1~~, a Kanien'kehá:ka of Kahnawà:ke's right to reside within the Territory will not be suspended when the non-Indigenous person referred to in section ~~21.1 20.1~~ was raised in the community of Kahnawà:ke is an Approved Kahnawà:ke Resident. ~~the member's right to reside within the Territory will not be suspended.~~

~~21.3 20.3~~ Any person who became entitled to be an Approved Kahnawà:ke Resident ~~non-member resident~~ through marriage under section 7.2 or section ~~15.2 14.2~~ of this Law will have their permission to be an Approved Kahnawà:ke Resident ~~non-member resident~~ suspended

**Comment [KF51]:** Consensus reached to include cohabiting and allowing a non-Indigenous person to reside on property. See Record of Discussion 2014-05-21, pages 6 & 7. The Drafting Team recommends that the cohabiting ground form its own subsection for ease of reference.

pending a review by the Registrar Council of Elders in the following cases:

- a) upon divorce from a Kanien'kehá:ka of Kahnawà:ke member, or
- b) when they have ceased ordinarily cohabiting ~~ating~~ with their spouse, ~~due to circumstances within their control.~~

21.4 ~~20.4~~ Any person whose recognition as a Kanien'kehá:ka of Kahnawà:ke membership or permission to be an Approved Kahnawà:ke Resident ~~non-member resident~~ was approved based on information, documents or circumstances that are fraudulent, false or misleading may have their recognition as a Kanien'kehá:ka of Kahnawà:ke membership or permission to be an Approved Kahnawà:ke Resident ~~revoked.~~ ~~non-member resident~~ ~~revoked.~~

~~20.5~~ Any person may renounce their membership or non-member residency by providing written notice to the Registrar and the Council of Elders. Renunciation of the person's membership or non-member residency will be effective from the date on which it is confirmed by resolution of the Council of Elders. Copies of the Council of Elder's resolution will be sent by registered mail to the person who renounced his or her membership or non-member residency, and to the Registrar. The Registrar will, upon receipt of the resolution, remove the person's name from the Kahnawà:ke Kanien'kehá:ka Registry or from the list of non-member residents, as the case may be.

**Comment [KF52]:** The Drafting Team recommends that this provision dealing with renunciation, adapted as required, be listed under a "Renunciation" section for ease of reference. See section 22.1.

21.5 ~~20.6~~ A Kanien'kehá:ka of Kahnawà:ke member who commits a material breach of:

- a) any of the criteria on which his or her recognition membership is based,
- b) any of his or her responsibilities as a Kanien'kehá:ka of Kahnawà:ke member, as set out in this Law,
- c) the conditions, limitations or restrictions that are attached to his or her recognition membership, if any, or,
- d) their Kanien'kehá:ka of Kahnawà:ke Pledge and Oath of Respect Member's Pledge,

may have their recognition membership suspended or revoked by the Registrar.

**Comment [KF53]:** The Drafting Team recommends that it be clarified that it is the Registrar who will be making this decision.

21.6 ~~20.7~~ An Approved Kahnawà:ke Resident ~~non-member resident~~ who breaches:

- a) any of the criteria on which his or her permission to be an Approved Kahnawà:ke Resident ~~non-member resident~~ is based,
- b) any of his or her obligations as an Approved Kahnawà:ke Resident, ~~non~~

~~member resident~~, as set out in this Law,

- c) any of the conditions, limitations or restrictions that are attached to their permission to be an Approved Kahnawà:ke Resident, ~~non-member resident~~, or,
- d) their Oath of Respect,

may have their permission to be an Approved Kahnawà:ke Resident ~~non-member resident~~ suspended or revoked by the Registrar.

20.8 ~~The Regulations will provide a procedure for considering and deciding an application to suspend or revoke a person's membership or permission to be a non-member resident.~~

**Comment [KF54]:** The Drafting Team recommends that it be clarified that it is the Registrar who will be making this decision.

**Comment [KF55]:** The Drafting Team recommends that this provision, adapted as required, be moved into the Regulations section.

## RENUNCIATION

22.1 Any person may renounce their recognition as a Kanien'kehá:ka of Kahnawà:ke membership or as an Approved Kahnawà:ke Resident non-member residency by providing written notice to the Registrar, ~~and the Council of Elders~~. Renunciation of the person's recognition as a Kanien'kehá:ka of Kahnawà:ke membership or as an Approved Kahnawà:ke Resident non-member residency will be effective from the date on which it is received confirmed by the Registrar, ~~resolution of the Council of Elders~~. ~~The Copies of the Registrar's Council of Elder's confirmation of renunciation resolution~~ will be sent by registered mail to the person who renounced his or her recognition as a Kanien'kehá:ka of Kahnawà:ke membership or as an Approved Kahnawà:ke Resident non-member residency, and to the Registrar. The Registrar will, ~~upon receipt of the resolution~~, remove the person's name from the Kahnawà:ke Kanien'kehá:ka Registry or from the list of Approved Kahnawà:ke Residents, ~~non-member residents~~, as the case may be.

## REGULATIONS

23.1 ~~24.1~~ The Mohawk Council of Kahnawà:ke Council of Elders will, by Mohawk Council Executive Directive resolution, enact the Regulations necessary for the implementation of this Law, including:

- a) the procedure for considering and deciding an application to suspend or revoke a person's recognition as a Kanien'kehá:ka of Kahnawà:ke or permission to be an Approved Kahnawà:ke Resident,
- a)b) the form and content of Confidentiality Agreements,
- b)c) the form and content of the Kanien'kehá:ka of Kahnawà:ke Member's Pledge and the Oath of Respect,
- e)d) the form and content of applications for instatement or

reinstatement of recognition, membership,

- ~~d)e)~~ the form and content of applications for permission to be an Approved Kahnawà:ke Resident, non-member resident,
- ~~e)f)~~ the form and content of applications to suspend or revoke a person's recognition membership or permission to be an Approved Kahnawà:ke Resident, non-member resident,
- ~~f)~~ ~~the rules and procedures to be followed at meetings of the Council of Elders,~~
- g) the rules and procedures to be followed by the Registrar Council of Elders in conducting a review or hearing,
- h) such other Regulations that may be necessary to implement the provisions of this Law.

~~23.2 21.2~~ The Mohawk Council of Kahnawà:ke Council of Elders will consult with the Registrar before enacting Regulations establishing the forms required for the purposes of the Registrar's office.

~~21.3~~ ~~All Regulations enacted by the Council of Elders must be provided to the Mohawk Council of Kahnawà:ke for approval before they come into effect.~~

~~23.3 21.4~~ Copies of all Regulations enacted by the Council of Elders and approved by the Mohawk Council of Kahnawà:ke will be provided to the Registrar and will be made available distributed to members of the Kanien'kehà:ka of Kahnawà:ke and to Approved Kahnawà:ke Residents, non-member residents.

## OFFENCES AND PENALTIES

~~24.1 22.1~~ Those persons who are not listed on the Kahnawà:ke Kanien'kehà:ka Registry or the Approved Kahnawà:ke Resident list and who reside within the Territory are in violation of this law and commit an offence. Upon conviction, the offender is subject to immediate removal from the Territory by the Kahnawà:ke Peacekeepers.

~~24.2 22.2~~ The removal of a person from the Territory in accordance with section ~~24.1 22.1~~ must be temporarily stayed by the Court of Kahnawà:ke if:

- a) the person is the parent or guardian of one or more children under the age of six (6) years, and

- b) the decision to remove the person is issued between October 1<sup>st</sup> and May 1<sup>st</sup>.

24.3 ~~22.3~~ Any person who breaches any other provision of this Law, commits an offence and upon conviction is subject to fines up to Two Thousand (\$2,000.00) Dollars, imprisonment for up to six (6) months, or both.

## NOTICE

25.1 ~~23.1~~ Any notices required by this Law or the Regulations will be sent by registered mail and, for all purposes of this Law and the Regulations, will be deemed to have been received on the date the recipient signs for it.

25.2 ~~23.2~~ In the event a notice cannot be sent by registered mail, or the recipient fails or refuses to sign for it within fifteen (15) days from the date on which the registered mail was sent, the ~~Registrar~~ ~~Council of Elders~~ may ~~by resolution~~ direct that the required notice be given by bailiff or in any other way that reasonably ensures proof of reception, including publishing a summary of the notice for two consecutive weeks in the local electronic or print media.

**Comment [KF56]:** The Drafting Team recommends that additional methods of providing notice be included.

25.3 ~~23.3~~ Notice given by publication in accordance with this section will be deemed to have been received on the date following the date of the second publication.

25.4 ~~23.4~~ Notice given by publication in accordance with this section will satisfy the notice requirements of this Law or the Regulations.

## KANIEN'KÉHA VERSION OF LAW

26.1 ~~24.1~~ The Kanien'kéha version of this Law will be verified ~~by Elders of the community of Kahnawà:ke~~ to be a true translation of the English version.

26.2 ~~24.2~~ In the event of a conflict between the English language version and the Kanien'kéha version of this Law, the Kanien'kéha version will be the final authority.

## GENERAL PROVISIONS

27.1 ~~25.1~~ The Preamble is an integral part of this Law.

27.2 ~~25.2~~ The 1981 Moratorium and 1984 Kahnawà:ke Mohawk Law concerning membership are repealed on the date this section of the Law comes into force.

~~27.3~~ ~~25.3~~ The funds necessary to implement this Law and the Regulations will be provided by the Mohawk Council of Kahnawà:ke after being approved in its annual budget.

~~27.4~~ ~~26.4~~ The ~~Registrar Council of Elders~~ may ~~decide to by resolution~~ extend any of the time periods or deadlines set out in this Law or the Regulations if the ~~Registrar Council of Elders~~ is convinced that it is in the interest of fairness to do so.

#### ~~AMENDMENTS~~ PROCESS FOR THE PURPOSES OF THIS LAW

~~28.1~~ This Law may be amended in accordance with the procedure set forth in the ~~Community Decision-Making Process or any other process which may replace it.~~

**Comment [KF57]:** There was consensus on January 29, 2014 to remove the amending formula found at section 26 and replace it with the Community-Decision Making Process. See Record of Discussion 2013-01-29, page 5.

~~26.1~~ An amendment to the present law may be proposed by either:

~~a) the Council of Elders,~~

~~b) the Mohawk Council of Kahnawà:ke or,~~

~~c) one hundred (100) members of the Kanien'kehá:ka of Kahnawá:ke.~~

~~26.2~~ The party who proposes the amendment will make a written draft of the proposed amendment.

~~26.3~~ A proposed amendment submitted by one hundred (100) members of the Kanien'kehá:ka of Kahnawá:ke must be signed at the office of the Registrar within one (1) month of the first name having appeared on the proposed amendment.

~~26.4~~ The Registrar will verify that each person who has signed the proposed amendment is a member of the Kanien'kehá:ka of Kahnawá:ke, has signed the proposed amendment on the date indicated, is of the age of majority, has signed a sworn statement indicating the reasons why they propose the amendment and that no names appear more than once on the petition.

~~26.5~~ If the proposed amendment receives the required amount of signatures in the required amount of time, the Registrar will immediately forward the proposed amendment to the Council of Elders for their review.

~~26.6~~ If the Mohawk Council of Kahnawá:ke proposes the amendment, the draft will immediately be sent to the Council of Elders for their review.

~~26.7~~ If the amendment is proposed by the Council of Elders they will immediately send the proposed amendment to the Mohawk Council of Kahnawá:ke for

their review.

- ~~26.8 All the Elders or Chiefs, as the case may be, will conduct the initial review of the proposed amendments, and they will only be permitted to change the proposed amendment for wording and grammatical inconsistencies, but may not change the spirit or intent of the proposed amendment.~~
- ~~26.9 At least seven (7) of the Elders or Chiefs, as the case may be, must accept the proposed amendment, or revision to the amendment for the draft to be sent for a second review by the other group being either the Elders or Chiefs.~~
- ~~26.10 Either the Elders or the Chiefs, as the case may be, will conduct the second review. This group will either accept the draft as written or reject the draft. Acceptance or rejection requires a minimum of seven (7) members of the group to consent.~~
- ~~26.11 If after the second review is conducted the Elders or the Mohawk Council of Kahnawá:ke, as the case may be, reject the draft then, three (3) Elders and three (3) Chiefs will form a committee to conduct a third review of the draft.~~
- ~~26.12 If after a reasonable attempt the three (3) Elders and three (3) Chiefs are unable to reach consensus on the proposed amendment then the amendment is rejected.~~
- ~~26.13 If the three (3) Elders and three (3) Chiefs do reach a consensus on the proposed amendment then the finalized draft amendment will be released to the members of the Kanien'kehá:ka of Kahnawá:ke through the electronic and print media for input and questions.~~
- ~~26.14 Not less than thirty (30) days after the release of the finalized draft amendment(s) to the Kanien'kehá:ka of Kahnawá:ke, the Mohawk Council of Kahnawá:ke and the Council of Elders shall gather jointly to review any recommended changes or modifications by the Kanien'kehá:ka of Kahnawá:ke.~~
- ~~26.15 Upon agreement between the Council of Elders and the Mohawk Council of Kahnawá:ke, the draft amendment(s) shall be officially affirmed through a Resolution of the Mohawk Council of Kahnawá:ke and shall immediately come into force, unless otherwise specified in the amendment(s).~~

## ENFORCEMENT

- ~~29.1 27.1~~ The Kahnawá:ke Peacekeepers have the sole and exclusive authority to enforce this Law.
- ~~29.2 27.2~~ The Court of Kahnawá:ke has sole and exclusive jurisdiction to hear and decide all matters related to this Law. ~~offences under this Law.~~

**Comment [KF58]:** The Drafting Team recommends that the Court of Kahnawá:ke have jurisdiction to hear and decide all matters related to this law, not just offences under the law.

~~29.3~~ ~~27.3~~ If the Court of Kahnawà:ke finds any section of this Law to be invalid the decision does not render this Law invalid in its entirety.

#### ENACTMENT AND COMING INTO FORCE

~~30.1~~ ~~28.1~~ Further to the will of the Kanien'kehá:ka of Kahnawà:ke, this Law is enacted on November 10<sup>th</sup>, 2003 by MCR No:51/2003-2004. The provisions of this Law come into force on September 27<sup>th</sup>, 2004 in MCR No:41/2004-2005. {the date MCR# used to amend this law will be placed here}

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Draft Amendments (December 10, 2014- Track Changes)