

Title

KAHNAWÁ:KE ALCOHOLIC BEVERAGES LAW

K.R.L. c. A-1

[Enacted by MCR # 80/1995-96 on 27 Kentenhkó:wa/November 1995;
and the first amendment was affirmed by the Mohawk Council of
Kahnawá:ke on September 18, 2000]

Preamble

WHEREAS the Mohawk Council of Kahnawá:ke has the power and jurisdiction to enact a Law respecting the manufacture, possession, transportation, and sale of alcoholic beverages, and all matters related thereto; and

SECTION I

1. JURISDICTION

"Self
Determination"

1.1 The Mohawk People of Kahnawá:ke, as part of the Mohawk Nation and the Iroquois Confederacy, are, and have always been sovereign peoples.

"Exclusive
Jurisdiction"

1.2 The Mohawk People of Kahnawá:ke have consistently and historically exercised ultimate and exclusive jurisdiction over the Mohawk territories of Kahnawá:ke.

"Inherent Rights"

1.3 The Mohawk People of Kahnawá:ke have an existing and inherent right of self-determination which includes the right and the responsibility to maintain peace, order and security of persons and property within the Mohawk Territories of Kahnawá:ke. The Mohawk People of Kahnawá:ke have consistently and historically exercised this right and fulfilled this responsibility.

"Right to
Regulate"

1.4 In accordance with the Great Law of Peace, the Mohawk People abide by the principles of Power, Peace and Righteousness. These principles govern the direction of the Mohawk People of Kahnawá:ke for the present and future generations;

1.5 The Mohawk People of Kahnawá:ke have ultimate and exclusive power, right and jurisdiction to establish and maintain laws controlling the manufacture, possession, transportation, consumption and sale of alcoholic beverages within the Mohawk Territories of Kahnawá:ke, and all matters related thereto.

1.6 The Mohawk People of Kahnawá:ke have acknowledged the presence of alcohol within the Mohawk Territories of Kahnawá:ke and have identified the need to control the manufacture, possession, transportation, consumption and sale of alcoholic beverages within the Mohawk Territories of Kahnawá:ke.

1.7 Pursuant to Sections 81 and 85.1 of the *Indian Act* a Kahnawá:ke Intoxicant By-law No. 8 was enacted on August 12, 1987 by virtue of Mohawk Resolution No. 08/1987-88. This was later amended to By-law 100, a Law Concerning the Use of Intoxicants in Kahnawá:ke, dated November 30, 1992. Subject to the transitory provisions, this Law repeals and replaces these previous By-laws.

1.8 This Law is enacted in accordance with the will of the Mohawk People of Kahnawá:ke and is not dependent on or derived from the law or authority of any other government or authority.

“Purpose”

2. **PURPOSE**

2.1 This Law is an expression of the will of the Mohawk People of Kahnawá:ke regarding the manufacture, possession, transportation, and sale of alcoholic beverages within the Mohawk Territories of Kahnawá:ke and is a means of enhancing and promoting peace, order and security of persons and property within the Mohawk Territories of Kahnawá:ke.

“Application”

3. **APPLICATION**

3.1 This Law, and any regulations or rules derived from this Law, applies to the manufacture, possession, transportation, and sale of alcoholic beverages within the Mohawk Territories of Kahnawá:ke, and any matters related thereto.

3.2 This Law applies to Mohawk and non-Mohawk persons.

“Paramontcy”

4. **PARAMOUNTCY**

4.1 This Law is paramount over any other legislative act or regulation touching or concerning the manufacture, possession, transportation, and sale of alcoholic beverages, and any matters related thereto, insofar as it purports to relate to the Mohawk Territories of Kahnawá:ke, including any act or regulation of the Parliament of Canada; of the legislative assembly of any province of Canada; and of any other governments.

“Definitions”

5. **DEFINITIONS**

“Alcohol”

“**Alcohol**” means the product of distillation of any fermented liquid, whatever its origin, refined once or oftener, also synthetic ethyl alcohol and alcohol which is considered undrinkable;

<i>"Alcoholic Beverage"</i>	"Alcoholic Beverage" means any one of the five varieties of beverages defined in this section namely, Alcohol, Spirits, Wine, Cider and Beer, and every liquid and solid containing Alcohol, Spirits, wine, Cider and Beer and capable of being consumed by a human being;
<i>"Bar"</i>	"Bar" means a commercial establishment that derives its primary source of revenue from the sale of Alcoholic Beverages to the public for consumption on the premises;
<i>"Beer"</i>	"Beer" means the beverage obtained by the alcoholic fermentation in drinking water of an infusion or decoction of barley malt, hops or any other similar product, containing not less than .5% alcohol by volume;
<i>"Board"</i>	"Board" means the Alcoholic Beverages Control Board established and empowered by this Law;
<i>"Cider"</i>	"Cider" means the beverage obtained by the alcoholic fermentation of fruit juice, containing not less than .5% alcohol by volume;
<i>"Community Health Representative"</i>	"Community Health Representative" means a health care worker who provides information and education and who participates in the implementation of projects and programs regarding health and safety matters;
<i>"Court"</i>	"Court" means the Court of Kahnawá:ke;
<i>"Grocery"</i>	"Grocery" means a commercial establishment that derives its primary source of income from the sale of dry goods, dairy products and any other convenience items directly to the public;
<i>"Immediate Family Member"</i>	"Immediate Family Member" means a parent, spouse, sibling or child;
<i>"Kahnawá:ke Mohawk Government"</i>	"Kahnawá:ke Mohawk Government" means the governing authority of the Mohawk People of Kahnawá:ke, presently recognized to be the Mohawk Council of Kahnawá:ke;
<i>"Law"</i>	"Law" means this Communal Law on Alcoholic Beverages;
<i>"Manufacture"</i>	"Manufacture" means the creation or enhancement of an Alcoholic Beverage by a process of hand or machine;
<i>"Minor"</i>	"Minor" means a person who is less than twenty-one (21) years of age;
<i>"Mohawk People of Kahnawá:ke"</i>	"Mohawk People of Kahnawá:ke" means the members of the community of Kahnawá:ke;
<i>"Occasional"</i>	"Occasional" means of, or pertaining to, incidental or infrequent occasions;

<i>"Permit"</i>	"Permit" means a permit issued by the Alcoholic Beverages Control Board;
<i>"Possession"</i>	"Possession" means to have an item in one's custody, care or control, including an item in a vehicle or building over which one has custody, care or control;
<i>"Regulations"</i>	"Regulations" means the regulations enacted by the Board pursuant to this Law;
<i>"Restaurant"</i>	"Restaurant" means a commercial establishment, equipped with a full-sized kitchen, that derives its primary source of income from the sale of full course meals to the public;
<i>"Restaurant-Bar"</i>	"Restaurant-Bar" means a commercial establishment that functions as both a restaurant and a bar and that derives its source of income from both functions;
<i>"Retail"</i>	"Retail" means to sell in small quantities directly to the customer, for the consumer's own use;
<i>"Sale"</i>	"Sale" means the act of transferring the possession or ownership of an item in exchange for money or some other form of consideration;
<i>"Social Organization"</i>	"Social Organization" means those organizations located within Kahnawá:ke known as the Moose Lodge, Legion Hall, Knights of Columbus and the Marina and includes any private establishment open to members only that may in the future be recognized and sanctioned by the Mohawk People of Kahnawá:ke;
<i>"Spirits"</i>	"Spirits" means distilled alcoholic liquor;
<i>"Territories"</i>	"Territories" and "Mohawk Territories of Kahnawá:ke" means: <ul style="list-style-type: none"> (a) the lands now held under the mandate of the Mohawk People of Kahnawá:ke, excluding the lands known as Doncaster; (b) any and all lands that may be restored to the lands now held under the mandate of the Mohawk People of Kahnawá:ke through the negotiation and resolution of land grievances, and; (c) any and all lands that may be restored or added to the lands now held under the mandate of the Mohawk People of Kahnawá:ke as the result of any other means;
<i>"Transportation"</i>	"Transportation" means the act of moving an item, by any means, from one location to another;
<i>"Wholesale"</i>	"Wholesale" means to sell in bulk quantities directly to retailers for resale;

“Wine”

“Wine” the fermented juice of agricultural products used as an Alcoholic Beverage.

SECTION II

*“Creation of
Regulatory Board”*

6. CREATION OF REGULATORY BOARD

- 6.1 There is established a permanent body to be known as the Alcoholic Beverages Control Board, with the powers, duties and functions provided in this Law.
- 6.2 The mandate of the Board is to regulate the manufacture, possession, transportation, and sale of Alcoholic Beverages in accordance with this Law and the Regulations.
- 6.3 The Board shall fulfill its mandate in a manner that is fair, reasonable and equitable to all concerned. At all times, the Board shall conduct itself in a manner that best promotes the rights and interests of the Mohawk People of Kahnawá:ke.

“Authority”

7. AUTHORITY

- 7.1 Except as provided in this Law, the Board shall function independently and autonomously from the Kahnawá:ke Mohawk Government and any other person, group or organization.

“Eligibility”

8. ELIGIBILITY

- 8.1 Subject to the provisions of this Law, any Mohawk person who is at least twenty-one (21) years old is eligible to be a member of the Board.
- 8.2 Persons not eligible to be a member of the Board include any person:
- (a) who had a direct or indirect financial interest in an enterprise that manufactures, distributes, transports or sells Alcoholic Beverages.
 - (b) who has ever been convicted by a court of law in Canada or any other jurisdiction of an indictable or felony offence.

“Structure”

9. STRUCTURE

- 9.1 The Board shall consist of seven (7) members, including a Chairperson, Vice-Chairperson, Secretary and Treasurer.

9.2 The Chairman, Vice-Chairman, Secretary and Treasurer shall be appointed by the Board from its own members.

10. **GENERAL ELECTIONS**

10.1 Commencing at the time of the general election which follows the enactment of this section, and for each general election thereafter not more than four (4) positions on the Board will be made available to be filled through the election process. The purpose of this provision is to provide some continuity of the Board from one election to the next.

10.2 Not less than one (1) month prior to the date on which a general election is to be conducted, the Board, will:

- a) declare by resolution, how many positions will be made available to be filled in that general election. In determining the number of positions to be made available, the Board shall ensure that three (3) of its existing members will not be required to seek re-election in that general election and shall retain their positions until the next general election;
- b) determine, by drawing lots, which of its existing members will not be required to seek re-election in that general election;
- c) provide notice to the Mohawk People of Kahnawá:ke of the number of positions available to be filled in that general election and the names of the members who will and will not be required to seek re-election.

10.3 Notwithstanding sections 10.1 and 10.2, any Board member who is excluded from seeking re-election in one general election is not eligible to be excluded from the next election.

10.4 Members of the Board shall be elected by the Mohawk People of Kahnawá:ke in accordance with the following procedures:

- a) every two (2) years, the Board shall, by resolution, appoint an Electoral Officer;
- b) the Electoral Officer appointed by the Board shall conduct an election of the Board in accordance with the provisions of this Law and the *Regulations Governing the Mohawk Council of Kahnawá:ke Elections*, enacted May 21, 1990 (amended May 21, 1996 and April 3, 2000) (the “Election Regulations”) to the extent the Election Regulations do not conflict with this Law;

10.5 An unlimited number of eligible persons may be nominated by the Mohawk People of Kahnawá:ke for the position of Board member.

- 10.6 A committee will be established to prepare a summary of the duties, responsibilities and functions to be performed by Board members, to be made available to the Mohawk People of Kahnawá:ke for their information and assistance in the election process.
- 10.7 All members of the Board, once duly elected, shall be presented to the Mohawk People of Kahnawá:ke at a duly convened public meeting.
- 10.8 In the event a member or members of the Board resign, are removed or for any reason cease to function as Board members prior to the expiration of their term of office, the Electoral Officer may call a by-election to fill the vacancy or vacancies.
- 10.9 The Board, will, by majority vote, appoint one of its members as Chairperson. The Chairperson will preside over meetings of the Board and will ensure the Board follows the principles and procedures provided in this Law and the Regulations.

*“Vice
Chairperson”*

11. **VICE-CHAIRPERSON**

- 11.1 The Board will, by majority vote, appoint one of its members as Vice-Chairperson. The Vice-Chairperson shall act as Chairperson during meetings of the Board when the Chairperson is absent or unable to act.

“Terms of Office”

12. **TERM OF OFFICE**

- 12.1 All members of the Board shall serve a term of office of two (2) years.
- 12.2 Upon expiry of a member’s term of office, subject to the other provisions of this Law, the member is eligible to be re-elected for another term of office. There is no limitation on the number of consecutive terms of office a member may serve.

*“Removal from
Office”*

13. **REMOVAL FROM OFFICE**

- 13.1 A member of the Board may be removed from office prior to the expiry of his/her term of office by unanimous resolution of the other members.

“Members”

14. **MEMBERS**

- 14.1 A member of the Board may resign from office prior to the expiry of his/her term of office by giving a written notice to the Board at least thirty (30) days prior to the date on which the resignation is to be effective.

“Vacancy”

15. **VACANCY**

- 15.1 In the event one or more members are removed, resign or are unable to continue performing their duties for any reason:
- a) the member(s) position, will, by resolution of the Board, be declared vacant;
 - b) a notice of the vacancy or vacancies, and the reasons therefore, will be made available to the Mohawk People of Kahnawá:ke;
 - c) the Board may, by resolution, appoint an Electoral Officer to conduct a by-election for the purpose of electing a new member or members to fill the vacancy or vacancies;
 - d) the Electoral Officer appointed by the Board shall conduct the by-election in accordance with the provisions of this Law and the *Regulations Governing the Mohawk Council of Kahnawá:ke Elections*, enacted May 21, 1990 (as amended) to the extent the *Election Regulations* do not conflict with this Law;
 - e) in the event the Board does not appoint an Electoral Officer to conduct a by-election, the vacancy or vacancies will be filled at the next general election of the Board.

“Conflict of Interest”

16. **CONFLICT OF INTEREST**

- 16.1 No Board member may perform any duty, have any interest, pursue any activity or place himself in any situation that is in conflict with his duties and obligations as a member of the Board. If he does so, he shall be removed from office in accordance with this Law.
- 16.2 A Board member shall abstain from any discussions or decision making processes concerning an Immediate Family Member.

“Meetings”

17. **MEETINGS**

- 17.1 The Board will meet at least once every thirty (30) days or as may be necessary.
- 17.2 Meetings or portions of meetings of the Board may, at the Board’s discretion, be closed to the public.

“Quorum”

18. **QUORUM**

18.1 Five Board members make up a quorum. In the case of a tie, the person presiding over the session shall have a casting vote.

“Remuneration”

19. **REMUNERATION**

19.1 Members of the Board will receive no remuneration for any services associated with their office.

“Administration”

20. **ADMINISTRATION**

20.1 The Board will employ the support staff and will retain the professional assistance that is required to fulfill its mandate.

20.2 Administration costs collected by the Board pursuant to this Law shall be applied to the Board’s operating costs.

“By-Laws”

21. **BY-LAWS**

21.1 By-laws for internal management of the Board shall be adopted by resolution of the Board.

“Registry”

22. **REGISTRY**

22.1 The Board shall maintain an office and registers for Permit applications and decisions of the Board, as provided for in the Law. The registers shall be public and open for consultation during office hours. The Board shall also keep, for the purposes of the Law, records relating to all Permits in force and to every application for a Permit regarding which no decision has been made.

“Fiscal Year”

23. **FISCAL YEAR**

23.1 The fiscal year of the Board is from April 1 to March 31.

“Indemnity for Members”

24. **INDEMNITY FOR MEMBERS**

24.1 The Board shall use its best efforts to obtain insurance to indemnify any Board member who incurs liability while acting in good faith and within the scope of his mandate.

25. **FUNCTIONS AND POWERS OF THE BOARD**

25.1 The Board shall exercise functions which include:

- (a) issuing, suspending or revoking Permits granted by the Board under this Law;
- b) establishing the conditions attached to Permits and monitoring their use;
- (c) acting as liaison with similar authorities in other jurisdictions;
- d) enacting and administering all Regulations contemplated by this Law.

25.2 The Board has exclusive original jurisdiction:

- a) to rule on any matter concerning the Permits prescribed under this Law;
- (b) to establish and collect the administration costs;

25.3 Decisions of the Board regarding granting, suspending, canceling, or amending of Permits shall be in writing and include the reasons on which it is based. The decision shall be signed by the persons who rendered it and shall be entered in the Registry kept by the Board.

25.4 The Board may review or revoke any decision it has rendered:

- (a) when new information is discovered which, if it had been known in time, might have led to a different decisions;
- (b) where a party was unable, for a good reason, to be heard at the time the decision was made;
- c) where a defect in the Board’s procedure could make the decision invalid.

25.5 If an applicant provides false or misleading information to the Board the applicant will be refused and will not be allowed to re-apply to the Board for a period of two (2) years.

25.6 Any disputes arising out of a decision of the board must be submitted for resolution pursuant to the Kahnawá:ke Communal Arbitration Procedure.

"Emergency Orders"

26. **EMERGENCY ORDERS**

26.1 The Board may on an emergency basis and for a period of time not to exceed five (5) business days, by written order, directive or notice, prohibit the sale and transportation of Alcoholic Beverages until such emergency order can be considered by the Board which may in its discretion, terminate or extend such order for any length of time it deems necessary, or may issue emergency rules, Regulations, directions or orders concerning the sale of Alcoholic Beverages which will be valid during the stated emergency period.

"Restrictions"

27. **RESTRICTIONS**

27.1 The manufacture, possession, transportation, and sale of Alcoholic Beverages is forbidden in the Territories except as permitted by this Law and the Regulations.

27.2 Notwithstanding any other provision of this Law, no person under the age of eighteen (18) years may manufacture, possess, transport, or sell Alcoholic Beverages in the Territories.

"Manufacture"

28. **MANUFACTURE**

28.1 A person may manufacture Beer, Cider and Wine in his or her residence, provided the Beer, Cider or Wine is intended for personal consumption only and is not offered for sale.

28.2 The Board may issue a Permit to a person for the purpose of manufacturing Alcoholic Beverages to be offered for sale.

"Possession"

29. **POSSESSION**

29.1 A person may possess Alcoholic Beverages in the Territories:

- a) in an establishment in possession of a valid Permit issued under the Law;
- (b) in a private residence, provided the Alcoholic Beverages are kept for the personal consumption of the occupants of the private residence and are not intended for resale;
- (c) in churches, chapels and their dependencies which may possess Wine for ceremonial purposes;

- (d) in a storage facility controlled by the Kahnawá:ke Peacekeepers where Alcoholic Beverages are stored following a seizure;
- (e) in a place designated by this Law or by the Board.

“Transportation”

30. **TRANSPORTATION**

30.1 The following persons may transport Alcoholic Beverages within the Territories:

- (a) the holder of a valid Permit issued under this Law, or a person authorized by the holder of a valid Permit;
- (b) a person operating a vehicle transporting Alcoholic Beverages directly to or from a location described in subsection 29.1, or;
- (c) a person operating a commercial vehicle licensed by another jurisdiction and specifically authorized by the Board to transport Alcoholic Beverages within the Territories.

“Sale”

31. **SALE**

31.1 Only holders of a valid Permit issued by the Board are permitted to sell Alcoholic Beverages within the Territories.

31.2 The holder of a valid Permit is entitled to refuse to sell Alcoholic Beverages to any person.

“Permits”

32. **PERMITS**

32.1 The holder of a Permit issued by the Board must strictly comply with the terms and conditions of the Permit and any other terms and conditions imposed by the Board.

32.2 The Board may issue nine (9) different classes of Permits, namely:

- (a) Restaurant;
- (b) Bar;
- (c) Restaurant-Bar;
- (d) Spirits;
- (e) Beer, Cider and Wine;

- (f) Social Organization;
- (g) Wholesale;
- (h) Manufacture, and
- (i) Occasional.

“Restaurant”

33. **RESTAURANT**

- 33.1 A Restaurant Permit entitles the holder to sell Alcoholic Beverages to patrons of a Restaurant to be consumed with a mean and entitles the Permit holder’s patrons to transport Wine to the Restaurant for the purpose of personal consumption with a mean;
- 33.2 The Board shall determine by Regulation the number of Restaurant Permits to be issued under this Law.

“Bar”

34. **BAR**

- 34.1 A Bar Permit entitles the holder to sell Alcoholic Beverages to patrons of the Bar for consumption on the premises.
- 34.2 The Board shall determine by Regulation the number of Bar Permits to be issued under the Law.

“Restaurant-Bar”

35. **RESTAURANT-BAR**

- 35.1 To be eligible for a Permit, a Restaurant-Bar must physically separate the restaurant area from the bar area.
- 35.2 A Restaurant-Bar Permit entitles the holder to sell Alcoholic Beverages to patrons of the restaurant area and of the bar area for consumption on the premises.
- 35.3 The Board shall determine by Regulation the number of restaurant-Bar Permits to be issued under the Law.

“Spirits”

36. **SPIRITS**

- 36.1 A Spirits Permit entitles the permit holder to sell unopened containers of Spirits to the public.

36.2 The Board shall determine by Regulation the number of Spirits Permits to be issued under this Law.

“Beer, Cider and Wine”

37. **BEER, CIDER AND WINE**

37.1 A Beer, Cider and Wine Permit is only available to the proprietors of a Grocery, as defined by this Law.

37.2 A Beer, Cider and Wine Permit entitles the holder to sell unopened containers of Beer, Cider and Wine to customers of the Grocery.

37.3 The Board shall determine by Regulation the number of Beer, Cider and Wine Permits to be issued under this Law.

“Social Organization”

38. **SOCIAL ORGANIZATION**

38.1 A Social Organization Permit entitles the holder to sell Alcoholic Beverages to members of the Social Organization and their guests for consumption within the entirety of the premises.

38.2 A Social Organization Permit will affirm that the Social Organization is recognized and sanctioned by the Mohawk People of Kahnawá:ke and operates as governed by its own Constitutional Guidelines and By-laws and that the Social Organization’s regulations are deemed to be pursuant to this Law.

38.3 Social Organization Permits are exempt from any administration costs provided by this Law.

38.4 The Board shall determine by Regulation the number of Social Organization Permits to be issued under this Law.

“Wholesale”

39. **WHOLESALE**

39.1 A Wholesale Permit entitles the holder to sell Alcoholic Beverages to the holders of valid Spirits or Beer, Cider and Wine Permits.

39.2 The Board shall determine by Regulation the number of Wholesale Permits to be issued under this Law.

"Manufacture"

40. **MANUFACTURE**

40.1 A Manufacture Permit allows the permit holder to manufacture and sell Alcoholic Beverages pursuant to the Regulations.

40.2 The Board shall determine by Regulation the number of Manufacture Permits to be issued under this Law.

"Occasional"

41. **OCCASIONAL**

41.1 An Occasional Permit entitles the holder to sell or serve Alcoholic Beverages for consumption at the place and during the times indicated on the Permit;

41.2 Notwithstanding the eligibility requirements of section 44.1, the Board may issue an occasional Permit to a non-aboriginal person if, in the opinion of the Board, it is in the best interests of the Mohawk People of Kahnawá:ke to do so.

41.3 An Occasional Permit may be issued for a period of twenty-four (24) hours or such other period of time as the Board may determine.

41.4 The Board shall determine, in its sole discretion, the number of Occasional Permits to be issued at any given time; the times during which the Occasional Permit will be valid; and such other terms and conditions as the Board may determine are appropriate.

"Eligibility and Requirements for all Permit Applications"

42. **ELIGIBILITY AND REQUIREMENTS FOR ALL PERMIT APPLICATIONS**

42.1 The Board may issue a Permit to a natural person, a corporation, a partnership or a Social Organization.

"Corporations and Partnerships"

43. **CORPORATIONS AND PARTNERSHIPS**

43.1 A corporation or partnership may only obtain a Permit if each of the directors or partners fulfills the conditions listed in Sections 44.1 and 44.2.

"Natural Persons"

44. **NATURAL PERSONS**

44.1 To be eligible to apply for a Permit, a natural person must:

- (a) be at least eighteen (18) years old;
- (b) be an aboriginal person;

- (c) be the owner or the lessee of the establishment for which the Permit is sought or be specifically authorized in writing by the owner or the lessee of the establishment to have Alcoholic Beverages sold in the establishment;
- (d) have arranged the establishment in accordance with the standards prescribed by the laws applicable in the Territory; and
- (e) pay the administration costs determined in accordance with the Regulations.

44.2 A natural person must, when applying for a Permit, other than an Occasional Permit:

- (a) provide a written application in the form described in the Regulations stating his name, birth date, social insurance number, address and telephone number;
- (b) provide proof that he fulfills the conditions provided in Section 44.1;
- (c) indicate the place where the establishment is located and the room or terrace where he intends to sell or serve Alcoholic Beverages, and provide a photograph and / or video cassette thereof;
- (d) provide proof, satisfactory to the Board, that the premises for which the Permit is to be issued has been inspected by the Kahnawá:ke Fire Brigade and by the insurer from which the applicant obtains his or her third party liability insurance and that the Kahnawá:ke Fire Brigade and the applicant's insurer are satisfied that using the premises for the purposes for which the Permit is sought does not pose a fire or safety risk;
- (e) provide proof of third person liability insurance in the amount of one One Million (\$1,000,000.00) Dollars for a one year period from the date of the Permit.
- (f) provide a sanitation certificate from a Community Health Representative;
- (g) provide any information regarding convictions of indictable offences inside or outside the Territory.

45. **SOCIAL ORGANIZATIONS**

45.1 A Social Organization must, when applying for a permit:

"Social Organizations"

- (a) provide a written application in the form described in the Regulations, stating the name, address and telephone number of the Social Organization;
- (b) provide information showing that it meets the definition of "Social Organization" pursuant to this Law;
- (c) provide a copy of its regulations insofar as they pertain to the sale of Alcoholic Beverages;
- (d) provide proof, satisfactory to the Board, that the premises for which the Permit is to be issued has been inspected by the Kahnawá:ke Fire Brigade and by the insurer from which the applicant obtains his or her third party liability insurance and that the Kahnawá:ke Fire Brigade and the applicant's insurer are satisfied that using the premises for the purposes for which the Permit is sought does not pose a fire or safety risk;
- (e) provide proof of third person liability insurance in the amount of one One Million (\$1,000,000.00) Dollars for a one year period from the date of the Permit;
- (f) provide a sanitation certificate from a Community Health Representative;

45.2 In the event the regulations of a Social Organization, insofar as they pertain to sale of Alcoholic Beverages, are established, amended, revoked or otherwise revised, copies of the new regulations shall be provided to the Board at the earliest opportunity.

"Occasional Permit"

46. **OCCASIONAL PERMIT**

46.1 A person applying for an Occasional Permit must fulfill the conditions specified in Section 44.1.

"Review Procedure"

47. **REVIEW PROCEDURE**

47.1 On receipt of a Permit application, the Board must post a public notice advising the Mohawk People of Kahnawá:ke of the application and allowing ten (10) days for input from any interested person.

"Decision of the Board"

48. **DECISION OF THE BOARD**

48.1 Based on all the information the Board will make a decision on granting a Permit, refusing a Permit, or granting a Permit with conditions.

- 48.2 The Board must refuse to issue a Permit if it considers that:
- (a) the issue of the Permit will be against the public interest or may disturb the public peace as defined in Section 50.9; or that
 - (b) the establishment does not comply with the standards prescribed by the laws applicable in the Territory; or that
 - (c) the applicant has not fulfilled any other requirements of the Law or Regulations.
- 48.3 In the event the Board refuses an applicant, the Board must give their reasons, in writing, to the applicant.
- 48.4 There will be a waiting period of six (6) months after the original decision of the Board before any unsuccessful applicants can reapply for any other Permit.
49. **ISSUE, DURATION OF PERMITS AND PAYMENT OF ADMINISTRATION COSTS**
- 49.1 Every Permit issued by the Board, other than Occasional Permits, must be renewed annually.
- 49.2 The Board shall indicate in a Permit issued by it, where applicable, the place where the establishment is situated, in which room or on which terrace that Permit maybe used and the date of payment of the administration costs.
- 49.3 A permit must bear the signature of two (2) Board Members.
- 49.4 A Permit remains in force until it is revoked or expires.
- 49.5 The permit holder shall pay the annual administration costs determined in accordance with the Regulations.
- 49.6 Not less than sixty (60) days before the anniversary date of the issue of a Permit, the Board shall send to the holder a notice informing him of the date on which the Permit becomes renewable and the administration costs become payable to maintain the Permit in force.
- 49.7 If the Board does not receive the application for renewal and the administration costs by the anniversary date of the issue of the Permit, the holder will automatically lose his Permit without further warning and shall have to re-apply to the Board as if he had never had a Permit.

- 49.8 At the date of annual renewal, the Permit holder must provide of the following:
- (i) proof of liability insurance in the amount of One Million (\$1,000,000.00) Dollars;
 - (ii) proof, satisfactory to the Board, that the premises for which the Permit is to be issued does not pose a fire or safety risk;
 - (iii) sanitation certificate from a Community Health Representative; and
 - (iv) information regarding any convictions of indictable or felony offences inside or outside the Territory since the issuance or previous renewal of the Permit.

49.9 In considering whether to renew a Permit, the Board will consider all relevant information available to it relating to any problems, incidents or complaints that have arisen in relation to the establishment in question during the duration of the previous permit and may:

- a) renew the Permit;
- b) refuse to renew the Permit, or
- c) renew the Permit with such conditions as the Board deems to be appropriate.

50. **CONDITIONS ATTACHED TO A PERMIT**

50.1 A Permit must be used only within the days and times specified by the terms of the Permit.

50.2 No permit holder may tolerate a person remaining in his establishment for more than thirty (30) minutes after the time the Permit must cease to be used if the person is consuming Alcoholic Beverages.

50.3 In an establishment where a Permit is used, it is forbidden to sell or serve Alcoholic Beverages elsewhere than in the place designated by the Permit.

50.4 The Alcoholic Beverages which the permit holder possesses for sale to his customers or guests must, while in the establishment where he carries on his business, be kept in the containers in which they were delivered to him.

50.5 Permit holders may not refill any containers in which Alcoholic Beverages were originally purchased or delivered to him.

*“Conditions
Attached to a
Permit”*

- 50.6 A permit holder must keep his Permit posted, in public view, in the room or on the terrace where the Permit is used.
- 50.7 The holder of a Permit must keep posted a price list of the Alcoholic Beverages he sells. The holder of a restaurant Permit may put that price list on a menu.
- 50.8 The permit holder must not use his Permit in a manner that will disturb the public peace as defined below in Section 50.9.
- 50.9 The Board, in the performance of its functions and the exercise of its powers, in cases involving the public peace, may, among other factors, take into account:
- (a) any noise, gathering or assembly which results or may result from the operation of the establishment that may disturb the peace in the neighborhood;
 - (b) the place where the establishment is located.
- 50.10 A permit holder shall:
- (a) serve Beer in a manner permitting the patron to identify, on the container, the brand of Beer he ordered with the exception of draft Beer;
 - (b) serve any other Alcoholic Beverage in its original container bearing the brand, and open it in the presence of the patron who ordered it.
- 50.11 No Permit may be used by a person other than its holder.
- 50.12 A permit holder may not give, sell, bequeath or otherwise transfer a Permit to another person, without the express written permission of the Board.
- 50.13 No permit holder may, even inside his establishment, use his Permit in a place other than that specified in his Permit.

51. **MINORS**

- 51.1 A permit holder shall not sell Alcoholic Beverages to a Minor. A permit holder shall not sell Alcoholic Beverages to a person of full age if he knows that person is buying them for a Minor.
- 51.2 A permit holder shall not admit a Minor to his establishment, allow him to present or to participate in a show, or employ him, with the exception of Beer, Cider and Wine permit holders and restaurant permit holders. All permit holders must not allow Minors to sell and / or serve Alcoholic Beverages.

"Minors"

- 51.3 However, a permit holder may admit a Minor to or allow his presence:
- (a) on a terrace if the Minor is accompanied by his father or mother or the person having parental authority;
 - (b) in a room or on a terrace, only so that the Minor may cross it;
 - (c) in a room or on a terrace access to which is restricted to a group of persons at a reception, if the Minor is a member of that group.
 - (d) in a designated area as determined by Regulation.
- 51.4 Any person may be required to prove that he is not a Minor by an identification with a photograph when he wishes to purchase Alcoholic Beverages or, to be admitted to an establishment serving Alcoholic Beverages.
- 51.5 A Minor shall not:
- (a) purchase Alcoholic Beverages for himself or for another person;
 - (b) be found, without a legitimate excuse, in a bar;
 - (c) falsely represent that he is a person of full age to purchase Alcoholic Beverages or to be admitted to a bar;
 - (d) accept Alcoholic Beverages purchased for himself.
- 51.6 In proceedings for contravention of this section, the burden is on the defendant to prove that, at the time of the offence, he was of full age.

SECTION III

PENALTIES

- 52.1 Any person, who, without a valid Permit:
- (a) solicits or receives an order for Alcoholic Beverages;
 - (b) keeps or exposes Alcoholic Beverages with intent to sell;
 - (c) transports Alcoholic Beverages;
 - (d) serves Alcoholic Beverages in contravention of this Law;

"Penalties"

- (e) sells, or otherwise distributes, Alcoholic Beverages;

is guilty of an offence and liable to a fine up to two-thousand dollars (\$2000.00) and / or serve a term in a correctional facility up to six (6) months in the Territory or outside the Territory, and / or to an equivalent term of community service. The names(s) of the convicted person(s) may be printed in a local newspaper chosen by the Board.

52.2 Any person who, being the holder of a Permit:

- (a) sells any Alcoholic Beverage of a kind other than that which his Permit authorizes him to sell;
- (b) sells alcoholic Beverages which his Permit authorizes him to sell, but to a person other than one to whom his Permit , the Law or Regulations authorizes him to sell them;
- (c) keeps or allows to be kept, elsewhere than in his residence and for his personal use, Alcoholic Beverages other than that which he is authorized to sell under his Permit;

is guilty of an offence and liable to a fine up to two thousand dollars (\$2000.00) and / or to serve a term in a Correctional facility up to six (6) months in the Territory or outside the Territory, and / or to an equivalent term of community service.

52.3 Any person who, being the holder of a Permit:

- (a) sells, serves or allows to be consumed any Alcoholic Beverages that his Permit authorizes him to sell, serve or allow to be consumed, but in any place, or in any manner, other than his Permit authorizes him to sell.
- (b) sells, serves or allows to be consumed any Alcoholic Beverages that his Permit authorizes him to sell, serve or allow to be consumed, but outside the days or hours when he may use that Permit:
- (c) sells any Alcoholic Beverages that his Permit authorizes him to sell:
 - (i) to any minor, or to a person for consumption by a minor;
 - (ii) to any person in a state of drunkenness;
 - (iii) to any person other than a minor, knowing that the Alcoholic Beverages is so bought for a person obviously under the influence of Alcoholic Beverages and is intended to be drunk by such person;

(d) does not keep that Permit constantly posted in view of the public in the room or on the terrace where he uses it;

(e) contravenes a regulation made under this Law;

is guilty of an offence and liable to a fine not exceeding two thousand dollars (\$2000.00) and /or to serve a term in a correctional facility in the Territory or outside the Territory, and/or to an equivalent term of community service.

52.4 Any person who, without lawful excuse, is found in a room where Alcoholic Beverages are sold without a Permit is guilty of an offence against this Law and liable to a fine no less than fifty dollars (\$50.00) and not exceeding two hundred and fifty dollars (\$250.00).

“Enforcement”

53. **ENFORCEMENT**

53.1 The Peacekeepers of Kahnawá:ke have sole authority to enforce this Law and regulations.

53.2 Any Peacekeeper of Kahnawá:ke may,

(a) where he has reasonable cause to believe that Alcoholic Beverages are being sold or transported in the Territory contrary to this Law or the Regulations, in containers, whether or not they are containing Alcoholic Beverages, open such containers with all necessary assistance and even by force in case of resistance, and examine the contents thereof:

(i) where he has reasonable cause to believe that such Alcoholic Beverages, by reason of their quantity, are being transported to be sold;

(ii) if they are addressed to a person who does not hold a Permit, for the sale of Alcoholic Beverages, and where there is reasonable cause to believe that such person has already been convicted of an offence under this Law; or

(iii) if, according to the circumstances under which the Alcoholic Beverages are transported, he has reasonable cause to believe that they are being so transported to be sold without a Permit;

(b) where he has reasonable cause to believe that Alcoholic Beverages are kept or sold in contravention of this Law, enter any place with a search warrant, even by force, search such place and take any measure necessary for the discovery of such Alcoholic Beverages;

(c) where he or the Board has reasonable cause to believe that Alcoholic Beverages are kept, transported or sold in contravention of this Law, enter any place with a search warrant, and seize any Alcoholic Beverages otherwise than as herein above indicated, in addition to any other items directly related to the alleged contravention of this Law to ensure the owner's business ceases, including such things as customer accounts, refrigerators, cash registers, funds traded, all at the discretion of the Court.

54.3 When Alcoholic Beverages and other items are seized they shall be stored in a Peacekeeper storage facility and the Peacekeepers shall have custody thereof until the Court has disposed of them by a order.

54.4 When Alcoholic Beverages are transported in contravention of this Law, and are seized in a vehicle used for such transportation, the Peacekeepers may detain the vehicle, and use it, without charge, to transport and place in the custody of the Peacekeepers the Alcoholic Beverages seized and the containers containing them. Furthermore, the Peacekeepers may seize the vehicle and place it in the custody of the Peacekeepers until an order is rendered by the Court.

"Confiscation"

54. **CONFISCATION**

54.1 When Alcoholic Beverages are seized under this Law, the Court may order them confiscated, upon proof of any contravention of the Law.

54.2 The Peacekeepers of Kahnawá:ke shall have custody of all seized vehicles thereof until the Court has disposed of them by order.

54.3 Every prosecution under this Law must begin within six (6) months from the date the offence is committed.

*"Suspension,
Variation and
Cancellation of
Permit:"*

55. **SUSPENSION, VARIATION AND CANCELLATION OF PERMITS**

55.1 In the event the Board learns or is advised by any person that the holder of a Permit issued pursuant to this Law:

a) has obtained the Permit as the result of false or misleading representations;

(b) no longer fulfills one of the conditions provided by Section 44.1, 44.2, and 45.1;

(c) has been convicted of an offence under this Law;

- (d) has been convicted of an indictable offence or felony inside or outside the Territory;
- e) in the event the Board receives information of problems, incidents or complaints in relation to the establishment to which the Permit applies;

the Board shall immediately forward a written notice to the Permit holder advising of the particulars of the alleged violation and requesting a written response be provided to the Board within ten (10) days.

- 55.2 In the event the Permit holder fails to respond to the Board within ten (10) days, the Board may suspend, vary or cancel the Permit without further notice to the Permit holder.
- 55.3 In the event the Permit holder responds to the Board admitting the violation alleged, the Board shall:
 - (a) suspend, vary or cancel the Permit, or
 - b) give the Permit holder an opportunity to correct the violation within a specific period of time and provide proof to the Board of the correction.
- 55.4 In the event the Permit holder having been given the opportunity to correct the violation fails to do so, the Board shall suspend, vary or cancel the Permit without further notice to the Permit holder.
- 55.5 In the event the Permit holder responds to the Board within ten (10) days denying the alleged violation, the Board shall conduct a hearing into the matter.
- 55.6 The hearing conducted by the Board shall follow the procedures established by the Board by regulation. The hearing procedures must include, but are not limited to, the following provisions:
 - (a) the Permit holder has the right to be represented by legal counsel;
 - (b) the Permit holder has the right to be present at the hearing; to hear all evidence against him and to respond, orally or in writing, to all accusations made against him;
 - (c) the Board will only make a finding against the Permit holder if, in the opinion of the Board, the evidence is clear and convincing;
 - (d) the Board will provide the Permit holder with its decision in writing;
 - (e) the decision of the Board will be entered into the Board's Registry.

- 55.7 At the conclusion of the hearing the Board shall:
- (a) dismiss the allegations;
 - (b) suspend, vary or cancel the Permit, or:
 - (c) take any other action that the Board decides is appropriate under the circumstances.
- 55.8 The Board may assess the costs of the hearing against the Permit holder.
- 55.9 Notwithstanding the foregoing, in the event the Board is convinced that there is a serious and urgent reason, the Board may order the immediate suspension of a Permit pending a hearing.
- 55.10 Any changes to an establishment to which a Permit has been issued must be brought to the attention of the Board by the Permit holder. Upon receiving such notice, the Board must immediately re-evaluate the validity of the Permit.

"Court"

56. **COURT**

- 56.1 The Court shall have sole original jurisdiction to prosecute any offences under this Law.

"Regulations"

57. **REGULATIONS**

- 57.1 The Board shall make Regulations:

- (a) determining the amount of the administration costs that are payable under this Law;
- (b) prescribing, particularly in respect of the surface area, lighting and furnishings, and standards of arrangement applicable to establishments and their rooms and terraces for purposes of fire, safety and sanitation;
- (c) prescribing the standards it must apply to fix the number of persons who may be admitted at one time to an establishment or to a room or a terrace thereof;
- (d) determining the pricing of Alcoholic Beverages;
- (e) determining the form and content of notices and price lists;

- (f) determining the form and content of the application and renewal forms it may require from a permit holder;
- (g) prohibiting or governing the granting of an advantage calculated to encourage the sale of Alcoholic Beverages;
- (h) determining the manner in which Alcoholic Beverages may be manufactured in the Territory;
- (i) drafting a code of ethics for Board members;
- (j) governing the internal management of the Board;
- (k) limiting the number of each type of Permit that may be held in the Territory;
- (l) limiting the days and times permit holders may open their establishments;
- (m) providing for separate areas within establishments for families with minor children;
- (n) providing rules of operation for the storage facility housing articles seized under this Law;
- (o) developing a process by which the Board will conduct hearings;
- (p) determining the procedure applicable before it;
- (q) providing any other measure useful to the application of this Law.

SECTION IV

"General"

58. GENERAL

- 58.1 All references in this Law to the male gender shall be interpreted to include the female gender.
- 58.2 If any part of this Law is found by the Court to be invalid it may be severed and will not invalidate the Law in its entirety.
- 58.3 This Law may only be amended by first gaining the approval of the Mohawk People of Kahnawá:ke.

58.4 Further to the will of the Mohawk People of Kahnawá:ke, this Law comes into force and effect on the date it is affirmed by resolution of the Kahnawá:ke Mohawk Government.

"History"

59. **HISTORY**

Origin MCR #80/1995-96. Date of Revision : Tsothohrkó:wa/January 1, 2008.