

**MOHAWK COUNCIL OF KAHNAWÁ:KE
DISCIPLINARY MEASURES
REGULATIONS
K.R.L. c. E-1- r.1**

TITLE

- 1.1 The title of these Regulations is the “Mohawk Council of Kahnawá:ke Disciplinary Measures Regulations K.R.L. c. E-1-r.1”

JURISDICTION

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

DEFINITIONS

- 3.1 In these Regulations:

“Act of Censure” means the procedure for the sanctioning of an Elected Chief for one of the reasons mentioned in section 4.2 of the present Regulation.

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

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

“Betraying the public trust” means:

- (a) Acting in a manner that is contrary to the best interests of the People of Kahnawá:ke, their lands, water or other assets;
- (b) Allowing a Chief's personal or financial interests to conflict with the best interests of the People of Kahnawá:ke, their lands, water or other assets, by:
 - 1. Failing to disclose that a Chief has a personal or financial interest in any matter that is before Council;
 - 2. Participating in a meeting of Council that involves a matter in which a Chief has a personal or financial interest; or

3. Entering into a transaction in which a Chief has a personal or financial interest, which transaction is in conflict with the interests of the People of Kahnawá:ke, their lands, water or other assets.

“Criminal Offense” means those offenses that carry penalty of a prison sentence of at least two (2) years within any legally recognized jurisdiction.

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

- (a) Not attending regularly scheduled meetings of the Mohawk Council of Kahnawá:ke;
- (b) Not attending meetings related to their portfolio;
- (c) Disclosing sensitive information or materials without the approval from the Mohawk Council of Kahnawá:ke; and
- (d) Acting in a manner that is contrary to the Chief’s Declaration of Office and the Regulations for the Operation of Chief and Council.

“In Good Standing” means that they have not been removed from office during their elected term.

“Justice” means a Justice of the Court of Kahnawá:ke.

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

“People of Kahnawá:ke” means all persons who is listed as a member on the Kahnawá:ke Kanien’kehá:ka Registry, as defined by the Kahnawá:ke Membership Law.

“Person” means a physical person.

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

“Vote of Non-Confidence” means the procedure by which Elected Chiefs express their common lack of confidence in another Elected Chief and results in the sanctioning of the Elected Chief for one of the reasons mentioned in section 7.1 of the present Regulation

OVERVIEW

- 4.1 An elected Chief of Mohawk Council of Kahnawá:ke is subject to Two (2) possible methods of disciplinary action:
- (a) Act of Censure;
 - (b) Vote of Non-Confidence.
- 4.2 An elected Chief of Mohawk Council of Kahnawá:ke is subject to an Act of Censure, for any of the following demonstrated reasons:
- (a) Betraying the public trust;
 - (b) Acting in bad faith;
 - (c) Failing to fulfill the responsibilities and duties of their office;
 - (d) No longer meeting the criteria for their elected office;
 - (e) Conduct inconsistent with the responsibilities of their office; or
 - (f) Conviction of a criminal offense.

ACT OF CENSURE

- 5.1 An elected Chief of Mohawk Council of Kahnawá:ke is subject to an Act of Censure, as a disciplinary measure.
- 5.2 Acts of Censure shall serve as a warning to elected Chief of the Mohawk Council of Kahnawá:ke for unacceptable behavior or conduct unbecoming an elected Chief of the Mohawk Council of Kahnawá:ke.
- 5.3 An Act of Censure is used when the disciplinary measures of a Vote of Non-Confidence outweigh the action or activities taken by the elected Chief of the Mohawk Council of Kahnawá:ke, but which require redress by the Mohawk Council of Kahnawá:ke.
- 5.4 Any person who is a member listed on the Kahnawá:ke Kanien'kehá:ka Registry including an elected Chief, may forward a request to the Mohawk Council of Kahnawá:ke, requesting that they pass an Act of Censure against an elected Chief of the Mohawk Council of Kahnawá:ke.
- 5.5 The request will be received by the Mohawk Council of Kahnawá:ke, who will immediately appoint a person to investigate the allegations contained in the request within thirty- (30) days of the appointment. The Mohawk Council of Kahnawá:ke will notify the Court of Kahnawá:ke, in writing, immediately upon launching an investigation.
- 5.6 The investigator will report back their findings to the Mohawk Council of Kahnawá:ke within the time allotted. The report will include information on whether there are sufficient grounds contained in the allegations to warrant a disciplinary

- action be taken against the elected Chief of the Mohawk Council of Kahnawá:ke, who is the focus of the investigation as well as a recommendation on which disciplinary action should be considered, if at all. The report and recommendation is not binding on the Chiefs of the Mohawk Council of Kahnawá:ke.
- 5.7 The Mohawk Council of Kahnawá:ke will hold a secret ballot vote to determine whether or not the elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall be subject to an Act of Censure.
 - 5.8 The elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall be deemed to be in a conflict of interest and forbidden to participate in the vote.
 - 5.9 A vote for an Act of Censure against the elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall require the support of seven (7) elected Chiefs of the Mohawk Council of Kahnawá:ke.
 - 5.10 The elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall be entitled to be present during the presentation of the report of the investigation, but shall be required to remove himself/herself during the deliberation of the Mohawk Council of Kahnawá:ke, as they would be considered in a conflict of interest.
 - 5.11 Prior to the vote being taken, the elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall be entitled to address the other Chiefs of the Mohawk Council of Kahnawá:ke.
 - 5.12 If, after the vote is taken, less than seven (7) elected Chiefs of the Mohawk Council of Kahnawá:ke have voted in favor of an Act of Censure, the proceedings shall end and the community shall be informed of the outcome through the Kahnawá:ke electronic and print media at the earliest possible time.
 - 5.13 If, after the vote is taken, at least seven (7) elected Chiefs of the Mohawk Council of Kahnawá:ke have voted in favor of an Act of Censure, the elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the Act of Censure may be suspended from official duties, and may include the suspension of any pay, in accordance with the Mohawk Council of Kahnawá:ke Personnel Policy. This suspension will be for a period not to exceed sixty (60) days. The elected Chief of the Mohawk Council of Kahnawá:ke who has been Censured shall refrain from participating in any official functions and activities and refrain from presenting themselves as an elected Chief of the Mohawk Council of Kahnawá:ke throughout the duration of their suspension. The length of suspension will be determined as part of the Act of Censure and may vary on a case-by case basis and the community shall be informed of the outcome and general reason(s) for the Censure, through the Kahnawá:ke electronic and print media at the earliest possible time.
 - 5.14 The Chief who has been the focus of an Act of Censure is deemed not to be in good standing during the period in which they are suspended.
 - 5.15 An elected Chief of the Mohawk Council of Kahnawá:ke, who has been Censured for the third (3rd) time shall automatically include, as part of the Act of Censure against them, the declaration that they are not “in good standing”, and as such will

be barred from seeking office in future elections as determined by *The Kahnawake Election Regulations Law* K.R.L c. E-1.

APPEALS TO AN ACT OF CENSURE

- 6.1 The elected Chief of the Mohawk Council of Kahnawá:ke who has been Censured may appeal the Act of Censure to the Court of Kahnawá:ke.
- 6.2 The Court of Kahnawá:ke will hold the appeal hearing within thirty (30) days of the receipt of the appeal.
- 6.3 A Justice of the Court of Kahnawá:ke shall preside over the appeal hearing and may rule to uphold the Act of Censure, or overturn the Act of Censure, or overturn the Act of Censure in-part.
- 6.4 The Act of Censure, and the sanctions imposed by the Chiefs of the Mohawk Council of Kahnawá:ke under section 5.13 and contained in the Act of Censure, shall continue to be in force throughout the appeal process, up to and including the time of when the Court passes its judgment on the appeal.

VOTE OF NON-CONFIDENCE

- 7.1 A Chief of Mohawk Council of Kahnawá:ke is subject to a Vote of Non- Confidence for any of the following demonstrated reasons:
 - (a) Betraying the public trust;
 - (b) Acting in bad faith;
 - (c) Failing to fulfill the responsibilities and duties of their office;
 - (d) No longer meeting the criteria for their elected office;
 - (e) Conduct inconsistent with the responsibilities of their office; or
 - (f) Conviction of a criminal offense.
- 7.2 Any person who is a member listed on the Kahnawá:ke Kanien'kehá:ka Registry, including an elected Chief, may forward a request to pass a Vote of Non-Confidence against an elected Chief of the Mohawk Council of Kahnawá:ke.
- 7.3 The request will be received by the Mohawk Council of Kahnawá:ke, who will immediately appoint a person to investigate the allegations contained in the request within thirty- (30) days of the appointment. The Mohawk Council of Kahnawá:ke will notify the Court of Kahnawá:ke, in writing, immediately upon launching an investigation.
- 7.4 The investigator will report back their findings to the Mohawk Council of Kahnawá:ke within the time allotted. The report will include information on whether there are sufficient grounds contained in the allegations to warrant a disciplinary action be taken against the elected Chief of the Mohawk Council of Kahnawá:ke,

who is the focus of the investigation as well as a recommendation on which disciplinary action should be considered, if at all. The report and recommendation is not binding on the Chiefs of the Mohawk Council of Kahnawá:ke.

- 7.5 The Mohawk Council of Kahnawá:ke will hold a secret ballot vote to determine the outcome of a Vote of Non-Confidence against the elected Chief who is the focus of the investigation.
- 7.6 The elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall be deemed to be in a conflict of interest and forbidden to participate in the vote.
- 7.7 The elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall be entitled to be present during the presentation of the report, but shall be required to remove himself/herself during the deliberation of the Mohawk Council of Kahnawá:ke, as they would be considered in a conflict of interest.
- 7.8 A Vote of Non-Confidence against an elected Chief of the Mohawk Council of Kahnawá:ke shall require the support of Eight (8) of the eligible elected Chiefs of the Mohawk Council of Kahnawá:ke who can participate in the vote.
- 7.9 Prior to the vote being taken, the elected Chief of the Mohawk Council of Kahnawá:ke who is the focus of the investigation shall be entitled to address the other Chiefs of the Mohawk Council of Kahnawá:ke.
- 7.10 If, after the vote is taken, less than the required number of elected Chiefs of the Mohawk Council of Kahnawá:ke have supported the Vote of Non-Confidence, the proceedings shall end and the community shall be informed of the outcome through the Kahnawá:ke electronic and print media at the earliest possible time.
- 7.11 If, after the vote is taken, at least the minimum required number of elected Chiefs of the Mohawk Council of Kahnawá:ke have supported the Vote of Non-Confidence, the elected Chief shall be removed from all their official duties and any activities related to their official functions. Furthermore, they shall not be entitled to any pay or other benefits. Their final paycheck will only include those accrued benefits up to the date of their removal.
- 7.12 The elected Chief of the Mohawk Council of Kahnawá:ke who has received a Vote of Non-Confidence shall have the option to:
 - (a) accept the decision of the Mohawk Council of Kahnawá:ke and be deemed to have left office not “in good standing”; or
 - (b) appeal within Ten (10) days of the decision to a Tribunal of Three (3) Justices of the Court of Kahnawá:ke.

APPEALS TO A VOTE OF NON-CONFIDENCE

- 8.1 A Tribunal shall be convened within thirty (30) days of the receipt of an appeal to a Vote of Non-Confidence. The Tribunal shall be held in a central location within the

Territory of Kahnawá:ke and be open to the public, unless the presence of the public disrupts the peaceful process of the Tribunal.

- 8.2 The elected Chief of the Mohawk Council of Kahnawá:ke who has had a Vote of Non-Confidence passed against them, may avail themselves, at their own expense, of legal counsel at the proceedings of the Tribunal.
- 8.3 The elected Chief of the Mohawk Council of Kahnawá:ke who has had a Vote of Non-Confidence passed against them, shall have the right to address and question any witness or evidence presented against them, including the right to provide evidence and witnesses to counter those against them.
- 8.4 The Tribunal shall determine the procedures for procuring evidence and testimony.
- 8.5 Once the case has been presented, the Tribunal shall recess for closed deliberations.
- 8.6 The Tribunal may rule to uphold or overturn the decision of the Mohawk Council of Kahnawá:ke who have passed a Vote of Non-Confidence against the elected Chief.
- 8.7 If the Tribunal rules to overturn the decision of the Mohawk Council of Kahnawá:ke regarding the elected Chief, that member shall be reinstated to their elected position and receive all lost revenue and/or wages, in accordance with the Mohawk Council of Kahnawá:ke Personnel Policy, and the community shall be informed of the outcome through the Kahnawá:ke electronic and print media at the earliest possible time.
- 8.8 If the Tribunal rules to uphold the decision of the Mohawk Council of Kahnawá:ke regarding the elected Chief, that Chief shall be officially removed from their elected office and shall be deemed to have left their office not “in good standing,” and the community of Kahnawá:ke will be informed of the outcome through the Kahnawá:ke electronic and print media at the earliest possible time.
- 8.9 There are no appeals to the outcome of the Tribunal proceedings, and the decision made shall be considered final.

GENERAL PROVISIONS

- 9.1 Any reference to the feminine gender in this document is deemed to include the masculine gender.
- 9.2 In hearing appeals or holding a Tribunal, the Court of Kahnawá:ke or the Tribunal may as part of a decision, order any party to the appeal or Tribunal to pay some or all of the legal expenses incurred by any other party in the appeal or at the Tribunal.

AMENDMENTS

- 10.1 These Regulations may be amended by a executive directive of the Mohawk Council of Kahnawá:ke.

- 10.2 Amendment(s) to these Regulations shall come into force on the date(s) specified by executive directive of the Mohawk Council of Kahnawá:ke.

ENFORCEMENT

- 11.1 The Court of Kahnawá:ke has sole and exclusive jurisdiction to hear and resolve any disputes arising out of the application of these Regulations.
- 11.2 If the Court of Kahnawá:ke finds any section of these Regulations to be invalid the decision does not render these Regulations invalid in its entirety.

ENACTMENT AND COMING INTO FORCE

- 12.1 Further to the will of the People of Kahnawá:ke, these Regulations are enacted on 24 Onerahtókha/April 2006 by MCED No: 04/2006-2007. The provisions of these Regulations come into force on the date set out in MCED No: 04/2006-2007.