
**TERMS OF REFERENCE
COMMUNITY REVIEW BOARD FOR THE
KANIEN'KEHÁ:KA OF KAHNAWÀ:KE LAW AND
KAHNAWÀ:KE RESIDENCY LAW**

OVERVIEW

The Community Review Board (“CRB”) will perform the duties set forth in the *Kanien'kehá:ka of Kahnawà:ke Law*, the *Regulation Respecting the Community Review Board*, the *Kahnawà:ke Residency Law*, and any other applicable regulations on an “as needed” basis. The CRB is an interim board that will function until such time as the Administrative Tribunal is operational pursuant to the *Kahnawà:ke Justice Act*.

The CRB will consist of five (5) people (“CRB Members”), at least two (2) of whom must have legal training, selected in accordance with applicable regulations.

The CRB will review decisions by the Kanien'kehá:ka of Kahnawà:ke Registrar and Residency Registrar (collectively the “Registrar”) on an interim basis in accordance with the *Kanien'kehá:ka of Kahnawà:ke Law*, the *Regulation Respecting the Community Review Board*, the *Kahnawà:ke Residency Law* and any other applicable regulations.

The CRB will also review decisions of the Compliance Officer on an interim basis in accordance with the *Kahnawà:ke Residency Law* and regulations.

The CRB will review and determine whether due process was followed, whether laws of natural justice were adhered to, ensures absence of bias, ensures the decision of the Registrar or Compliance Officer was reasonable, determine whether there was an absence of jurisdiction, or if there was a mistake of law.

The CRB, in performing its duties, conducting its meetings and making its decisions, will respect the rules of natural justice, 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.

The CRB has full authority over the conduct of any hearing and shall be flexible and ensure that the substantive law is rendered effective and is carried out.

The CRB is responsible to cooperate in any judicial proceedings stemming from its decisions that may be subject to judicial proceedings before the Court of Kahnawà:ke.

ROLES AND RESPONSIBILITIES

1. The CRB is responsible to review decisions by the Registrar or Compliance Officer, as the case may be.

- Reviews and determines whether due process was followed, whether laws of natural justice were adhered to, ensures absence of bias, ensures the decision of the Registrar or Compliance Officer was reasonable, determines whether there was an absence of jurisdiction, or, if there was a mistake of law;
- Quashes, confirms or varies the contested decision and, if appropriate, makes the decision which, in the opinion of the CRB, should have been made initially;
- Completes a preliminary review of relevant documentation and decides if there are grounds to review the decision;
- Responds to the applicant in writing stating whether the CRB will review the Registrar or Compliance Officer's decision, as the case may be;
- If it is decided that there are no grounds to review the decision, provides the applicant with reasons in the written response refusing the application;
- If an application is accepted, provides the applicant with a written response that must include information regarding the timeline and procedure for the review; and
- Proceeds on the basis of the record, if appropriate

2. The CRB is responsible to exercise full authority over the conduct of a hearing

- Informs the parties in writing of the date, time and place of the hearing of the issues no less than two (2) weeks in advance of the hearing;
- Conducts the hearing in keeping with the duty to act impartially, so as to ensure a fair process;
- Provides the parties the opportunity to be heard;
- Ensures that hearings will be recorded in a manner that ensures the accuracy and faithful reproduction of the proceedings and may include stenographic notes or audio recording;
- Conducts the proceedings in a flexible manner to ensure that the substantive law is rendered effective and is carried out;
- Orders any provisional measure or any measure to safeguard the parties' rights for the time and subject to the conditions the CRB determines;
- Rules on the admissibility of evidence and means of proof and may, for that purpose, follow the ordinary rules of evidence applicable in civil matters;
- Rejects any evidence obtained under such circumstances that fundamental rights and freedoms were breached and the use of which could bring the administration of justice into disrepute; and
- Deems the use of evidence obtained in violation of the right to professional secrecy as bringing the administration of justice into disrepute.

3. The CRB is responsible to render a decision(s) that will be communicated in clear and concise terms to the parties.

- Provides written reasons for every decision terminating a matter, even a decision communicated orally to the parties;

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- Reviews relevant documentation prior to making a final determination on the merits of the review;
 - The CRB may request relevant documents from either the Registrar, Compliance Officer or the person requesting the review, as the case may be;
 - The CRB may also request to interview a party or hold a hearing;
 - The CRB may quash, confirm or vary the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially;
 - Renders a written decision on the merits of the application within ninety (90) days of accepting the file for review; and
 - Sends copies of the decision to the person who requested the review of the Registrar's decision, the Registrar, the person who requested the review of the Compliance Officer's decision, the Compliance Officer and MCK Justice Services.
4. **The CRB will cooperate in any judicial proceedings at the Court of Kahnawà:ke as may be necessary.**

- Cooperates with whoever is assigned to defend a decision(s) made by the CRB.

ADMINISTRATIVE SUPPORT AND RESOURCES

MCK Justice Services will provide administrative support and caseflow management to the CRB.

ACCOUNTABILITY

Accountable to ensure that, in performing its duties, conducting its meetings and making its decisions, it will respect the rules of natural justice, 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.

Accountable to the Commissioner of Justice for administrative purposes.

ELIGIBILITY

To serve as a CRB Member, a person must:

- 1) Be at least 18 years old;
- 2) Be on the Kanien'kehá:ka of Kahnawà:ke Registry;
- 3) Be ordinarily resident in Kahnawà:ke;
- 4) Pass a background check; and
- 5) Be in good standing with their professional order, if applicable.

At least two (2) of the five (5) CRB Members must have legal training, defined as having completed an undergraduate degree in law at a recognized North American university. If there are not enough legally trained members who meet the above-mentioned eligibility criteria, the legally trained positions may be filled by the following people who have legal training, giving priority to this order:

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- 1) A person on the Kanien'kehá:ka of Kahnawà:ke Registry who is not ordinarily resident in Kahnawà:ke;
 - 2) A person who is a member of another First Nation;
 - 3) A person who is not a member of a First Nation but who has experience working with First Nations.

DURATION

The term of office will be for a three (3) year term upon appointment by resolution of the Kahnawà:ke Justice Commission. Each CRB Member will hold office until the earliest of the following:

- 1) The end of the three (3) year term;
- 2) They resign;
- 3) They, for any reason, are unable to perform their duties;
- 4) They are removed in accordance with the process set out in regulations; or
- 5) Upon the dissolution of the CRB once the Administrative Tribunal is operational.

REMUNERATION

Contractual basis for services rendered on an “as needed” basis at a rate of \$50.00 per hour up to a limit of 7.5 hours per review. This includes prehearing, hearing, deliberation and decision-making. An additional three (3) hours will be allotted for the primary drafter(s) of any written decision. For purposes of accountability, in the event that additional time is required to complete a review or draft, a request will be submitted to the Commissioner of Justice for additional time.

The rate of \$50.00 per hour will also apply to any official meetings or required training attended by CRB Members.

CRB Members will submit a detailed account of fees, making it possible to verify the validity of any fees, expenses, allowances and indemnities claimed.