

# KAHNAWÀ:KE RESIDENCY LAW

K.R.L. c. R-3

[Enacted by MCR #1/2019-2020 on 17, Ohiariha/June 2019]

## PREAMBLE

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

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

As Onkwehón:we, we have the collective right to determine who can and cannot reside among us. This right is fundamental to our survival.

Our rights as Onkwehón:we have been affirmed in the Two Row Wampum and have been recognized in other treaties we have entered into with foreign governments and in international covenants and declarations, such as in the United Nations Declaration on the Rights of Indigenous Peoples.

We have consistently and historically asserted both our rights as Onkwehón:we 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 who can reside among us. 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 Kahnawà: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 Kahnawà:ke and is intended to reflect our values and principles.

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

The rights on which this Law is based are collective rights belonging to the Kanien'kehá:ka of Kahnawà: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.

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 Kahnawà: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 our community will be determined. We reject all efforts to assimilate and extinguish our community under the guise of absolute individualism.

This Law represents one of the measures adopted by the community and the Mohawk Council of Kahnawà:ke to regulate residency within the Territory of Kahnawà:ke in order to preserve its culture, traditions and values.

Regulating residency is also important because of the limited resources of the community. The community wishes that only those who are on the Kahnawà:ke Kanien'kehá:ka Registry or who are Approved Kahnawà:ke Residents have the right to reside on the Territory.

However, the community is prepared to extend the privilege of temporary residency to others, under certain conditions. This Law will govern and regulate this privilege.

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 Kahnawà:ke.

1. **TITLE**

1.1 The title of this Law is the *Kahnawà:ke Residency Law*.

## 2. PURPOSE

2.1 This Law provides the criteria and procedures for:

- a) The authorization of Approved Kahnawà:ke Residents;
- b) The revocation of Approved Kahnawà:ke Residents;
- c) The issuance of Residency Permits, Work/Education Permits and Humanitarian Permits;
- d) The revocation of Residency Permits, Work/Education Permits and Humanitarian Permits; and
- e) The eviction of those living in the Territory who do not have the entitlement or permission to Reside under this Law.

## 3. DEFINITIONS

3.1 For the purposes of this Law and the Regulations,

**"Adoption"** means the legal acceptance of a child of another person as one's own child;

**"Age of Majority"** means eighteen (18) years of age;

**"Applicant"** means a person who is applying for authorization as an Approved Kahnawà:ke Resident or who is applying for a Permit under this Law;

**"Approved Kahnawà:ke Resident"** means a person who has been authorized by the Registrar as meeting the criteria provided in this Law to be an Approved Kahnawà:ke Resident, provided the person's authorization has not been revoked;

**"Common-Law Relationship"** means a conjugal relationship, not solemnized by a marriage ceremony, law or custom, between two persons who live together and publicly refer to themselves as partners or spouses;

**"Community Ties"** means a person's overall participation in community events, volunteer activities, charitable works and their positive contributions to the Kanien'kehá:ka of Kahnawà:ke;

**"Complaint"** means a written submission, in accordance with this Law and Regulations, by a Kanien'kehá:ka of Kahnawà:ke to the Compliance Officer or the

Residency Registrar, for the purposes of this Law it includes Complaints for revocation and Complaints for eviction;

**"Complainant"** a Kanien'kehá:ka of Kahnawà:ke who has submitted a Complaint to the Compliance Officer or the Residency Registrar pursuant to this Law;

**"Compliance Officer"** means the person appointed to that position in accordance with the provisions of this Law and its Regulations, as well as, anyone who replaces the Compliance Officer while they are on a temporary leave of absence or if they must recuse themselves because of a conflict of interest;

**"Criminality"** means:

- a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;
- b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;
- c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or
- d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

but does not include any offence which the Mohawk Council of Kahnawà:ke has publicly declared not to be an offence in the Territory. Nor does it include any offence related to an industry carried on in the Territory over which the Mohawk Council of Kahnawà:ke has assumed jurisdiction and is regulating said industry, but which would constitute an offence in Canada or a Province.

**"Dependent Person"** means a person who has reached the Age of Majority but who, as the result of physical or mental limitations, requires mandated care to maintain their quality of life;

**"Guardian"** means any person who is under a legal duty to provide for a Minor or Dependent Person;

**"Humanitarian Permit"** means the Permit issued by the Residency Registrar authorizing a person who meets the Humanitarian Permit criteria under this Law to Reside on the Territory;

**"Iah Onkwehón:we Té:ken"** means a person who has no Kanien'kehá:ka Lineage or Onkwehón:we Ancestry;

**"Immediate Family"** means spouse, sibling, parent, child, step parent, step child, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin;

**"Justice "** means a Justice of the Peace of the Court of Kahnawà:ke, or any other Judge appointed pursuant to the Kahnawà:ke Justice Act or its Regulations but excludes an Appeal judge appointed pursuant to that Act;

**"Kahnawà:ke Kanien'kehá:ka Registry"** means the list of Kanien'kehá:ka of Kahnawà:ke maintained by the Registrar in accordance with the *Kanien'kehá:ka of Kahnawà:ke Law* and, for greater certainty, does not mean any similar lists kept by Canada or any other government;

**"Kanien'kehá:ka of Kahnawà:ke"** means a person recognized as a Kanien'kehá:ka of Kahnawà:ke, according to the criteria and procedures in the *Kanien'kehá:ka of Kahnawà:ke Law* and the Regulations;

**"Kanien'kehá:ka of Kahnawà:ke Great-Grandparent"** means a great-grandparent who was or is recognized as Ahsén:nen Kanien'kehá:ka, at minimum, pursuant to the *Regulation Concerning the Custom Code Method of Calculation for Kanien'kehá:ka Lineage*;

**"Kanien'kehá:ka Lineage"** means direct descent from Kanien'kehá:ka Great-Grandparents, to a maximum amount of generations as required pursuant to the *Regulation Concerning the Custom Code Method of Calculation for Kanien'kehá:ka Lineage*, 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;

**"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 Tioweró:ton (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;

**"Minor "** means a person, who has not yet reached the Age of Majority;

**"Notice of Eviction"** means a written notice to a person Residing on the Territory indicating that they will be evicted from the Territory;

**"Notice of Revocation"** means a written notice to a person indicating that their privilege to Reside in Kahnawà:ke has been revoked;

**"Objection"** means a written submission, pursuant to this Law and Regulations, by a Kanien'kehá:ka of Kahnawà:ke to the Residency Registrar contesting the issuance of a Permit or the authorization to be an Approved Kahnawà:ke Resident;

**"Objector"** a Kanien'kehá:ka of Kahnawà:ke who has submitted an Objection to the Residency Registrar pursuant to this Law;

**"Onkwehón:we"** for the purposes of this Law means a person of an Indigenous Nation of what is currently known as Canada and the continental United States of America, including the Inuit;

**"Onkwehón:we Ancestry"** means direct descent from at least two (2) great-grandparents who were or are recognized as Ahsén:nen Onkwehón:we at minimum, pursuant to the *Regulation Concerning the Custom Code Method of Calculation for Kanien'kehá:ka Lineage*, 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;

**"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;

**"Organized Criminality"** means:

- a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or
- b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.

**"Permit"** means a written document issued by the Residency Registrar authorizing a person to Reside on the Territory. For the purposes of this Law it includes the Residency Permit, the Work/Education Permit and the Humanitarian Permit;

**"Raised in the Community"** means a person who has, from a young age, Resided and has spent more than half their lives on the Territory;

**"Regulation"** means any regulation enacted pursuant to this Law, by the Mohawk Council of Kahnawà:ke;

**"Reside"** or **"Residency"** means one of the places where one ordinarily lives or has their home;

**"Residency Permit"** means the Permit issued by the Residency Registrar authorizing a person who meets the Residency Permit criteria to Reside on the Territory;

**"Residency Registrar"** means the person appointed to that position in accordance with the provisions of this Law and its Regulations, as well as, anyone who replaces the Residency Registrar while they are on a temporary leave of absence or if they must recuse themselves because of a conflict of interest;

**"Permit Holder"** means a person who has been issued a Permit by the Residency Registrar which has not expired or been revoked;

"**Work/Education Permit**" means the Permit issued by the Residency Registrar authorizing a person who meets the Work/Education Permit criteria under this Law to Reside on the Territory.

**4. ENTITLEMENT TO RESIDE**

- 4.1 Only Kanien'kehá:ka of Kahnawà:ke have the entitlement to Reside on the Territory provided that entitlement has not been revoked under section 15 of the *Kanien'kehá:ka of Kahnawà:ke Law*.

**5. PERMISSION TO RESIDE**

- 5.1 Any person who does not have an entitlement to Reside pursuant to section 4 must file an application for Approved Kahnawà:ke Resident authorization or for a Permit.
- 5.2 Being authorized as an Approved Kahnawà:ke Resident or being issued a Permit provides, while the authorization or Permit is valid, a permission to Reside on the Territory but does not create any other right to entitlements or services and may be limited by Kahnawà:ke laws, regulations and policy.

**6. RESIDENCY REGISTRAR**

- 6.1 Upon the enactment of this Law, the Mohawk Council of Kahnawà:ke will, after posting the position, appoint a qualified Kanien'kehá:ka of Kahnawà:ke who meets the specified criteria to be the Residency Registrar for the purposes of this Law.
- 6.2 The Residency Registrar may be the same person as the Kanien'kehá:ka of Kahnawà:ke Registrar.
- 6.3 The Residency Registrar's appointment will be effective until:
- a) It is revoked, with cause, by the Mohawk Council of Kahnawà:ke;
  - b) the Residency Registrar resigns; or
  - c) the Residency Registrar, for any reason, is unable to perform their duties under this Law.
- 6.4 The Residency Registrar will:
- a) verify and authorize, pursuant to this Law, Approved Kahnawà:ke Residents;

- b) verify and decide applications for Permits;
- c) decide the merits of a Complaint for Revocation of authorization of an Approved Kahnawà:ke Resident or a Permit; and
- d) administer and implement any, procedure, process or policy required to give effect to sections 6.5 (a), (b) and (c) of this Law.

6.5 The Residency Registrar will at all times:

- a) respect the principles of fairness, dignity of person and compassion that are consistent with the traditions and customs of the Kanien'kehá:ka of Kahnawà:ke;
- b) ensure that all information in their possession 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 Residency, as may be required by access to information laws applicable within the Territory, or in accordance with this Law and Regulations; and
- c) ensure the information contained in the Permit list and the Approved Kahnawà:ke list is safeguarded from loss, destruction, tampering and unauthorized use.

6.6 The Residency Registrar will make available for the review of a Kanien'kehá:ka of Kahnawà:ke during normal business hours, the names of those who have been authorized as Approved Kahnawà:ke Residents or those who have been issued Permits.

6.7 The Residency Registrar will make available for the review by a Kanien'kehá:ka of Kahnawà:ke during normal business hours, the names of those who have had their authorization as Approved Kahnawà:ke Residents or Permits revoked or those who have been evicted from the Territory or who have had an Eviction Order issued against them.

## **7. COMPLIANCE OFFICER**

7.1 Upon the enactment of this Law, the Mohawk Council of Kahnawà:ke will, after posting the position, appoint a qualified Onkwehón:we who meets the specified criteria to be the Compliance Officer for the purposes of this Law.

7.2 The Compliance Officer's appointment will be effective until:

- a) it is revoked, with cause, by the Mohawk Council of Kahnawà:ke;
- b) the Compliance Officer resigns; or
- c) the Compliance Officer, for any reason, is unable to perform their duties under this Law.

7.3 The Compliance Officer will:

- a) when requested by the Residency Registrar investigate and verify the factual basis of Complaints to revoke Approved Kahnawà:ke Residents;
- b) when requested by the Residency Registrar investigate and verify the factual basis of Complaints to revoke Permits;
- c) investigate, verify and decide the merits of Complaints for eviction; and
- d) administer and implement any, procedure, process or policy required to give effect to section 7.4 (c) of this Law.

7.4 The Compliance Officer will at all times:

- a) respect the principles of fairness, dignity of the person and compassion that are consistent with the traditions and customs of the Kanien'kehá:ka of Kahnawà:ke;
- b) ensure that all information in his or her possession 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 Residency, as may be required by access to information laws applicable within the Territory, or in accordance with this Law and Regulation; and
- c) ensure that all the information in his or her possession is safeguarded from loss, destruction, tampering and unauthorized use.

## 8. COMMUNITY REVIEW BOARD

- 8.1 There is hereby established a body to be known as the Community Review Board empowered by the Mohawk Council of Kahnawà:ke, through the enactment of this Law.
- 8.2 The Community Review Board may be the same Board as the one established under the *Kanien'kehá:ka of Kahnawà:ke Law*.

- 8.3 The Residency Registrar or the Compliance Officer's decisions which are subject to review pursuant to this Law may be reviewed by the Community Review Board on an interim basis, until such time as the Administrative Tribunal is operational pursuant to the *Kahnawà:ke Justice Act*.
- 8.4 The Community Review Board will consist of five (5) members, selected in accordance with the procedures set out in the Regulations.
- 8.5 The Community Review Board may quash, confirm, or vary the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.
- 8.6 The Community Review Board, in performing its duties, conducting its meetings and making its decisions, will respect the principles of fairness, dignity of person, compassion and consensus that are consistent with the traditions and customs of the Kanien'kehá:ka of Kahnawà:ke.
- 8.7 The members of the Community Review Board will be remunerated for their services in an amount to be fixed by Mohawk Council Executive Directive.
- 8.8 MCK Justice Services will fund the Community Review Board. The Community Review Board will submit to MCK Justice Services an annual budget for its approval.
- 8.9 The Community Review Board will create and maintain a record of its proceedings any decisions it makes and the reasons for its decisions.

## **9. APPROVED KAHNAWÀ:KE RESIDENT**

### **Application to be an Approved Kahnawà:ke Resident**

- 9.1 A person who is not recognized as a Kanien'kehá:ka of Kahnawà:ke but who meets the criteria to be an Approved Kahnawà:ke Resident must apply to the Residency Registrar to be authorized as an Approved Kahnawà:ke Resident within thirty (30) days of Residing on the Territory.
- 9.2 Section 9.1 Applicants who are Residing on the Territory when the Law is enacted, will have one (1) year from the date of this section coming in to force to apply for this authorization; during this year the application fee will be waived.
- 9.3 A person whose name was on the Non-Member Resident list as defined in the *Kahnawà:ke Membership Law*, immediately before the coming into force of this Law

does not have to apply to the Residency Registrar to be an Approved Kahnawà:ke Resident. These persons will automatically have their names placed on the Approved Kahnawà:ke Resident list.

### **Eligibility to be an Approved Kahnawà:ke Resident**

- 9.4 The following are eligible to be authorized as an Approved Kahnawà:ke Resident:
- a) A person who has three (3) Kanien'kehá:ka of Kahnawà:ke Great-Grandparents and has Immediate Family and Community Ties;
  - b) A person who has two (2) Kanien'kehá:ka of Kahnawà:ke Great-Grandparents, has Immediate Family, Community Ties and who was Raised in the Community;
  - c) A person with Onkwehón:we Ancestry , who was adopted as a Minor by a Kanien'kehá:ka of Kahnawà:ke after November 10<sup>th</sup>, 2003 and has Immediate Family and Community Ties and who was or is being Raised in the Community;
  - d) A Iah Onkwehón:we Té:ken who was married to a Kanien'kehá:ka of Kahnawà:ke or someone eligible to be a Kanien'kehá:ka of Kahnawà:ke prior to the 1981 moratorium and is still married and Residing with that spouse or is still Residing and was widowed while Residing in the Territory; or
  - e) A Minor who was adopted by a Kanien'kehá:ka of Kahnawà:ke prior to November, 2003 and who has reached the Age of Majority.

### **Approved Kahnawà:ke Resident List**

- 9.5 Except as otherwise provided for in this Law or its Regulations, the Residency Registrar will keep a confidential list of the names, of those persons who have been authorized to be Approved Kahnawà:ke Resident section This list will be updated by the Residency Registrar, as required by this Law and the Regulations.
- 9.6 Once a person is authorized as an Approved Kahnawà:ke Resident, their name will remain on the Approved Kahnawà:ke Resident list until such time as:
- a) they request to have their name removed;
  - b) their authorization as an Approved Kahnawà:ke Resident is revoked pursuant to this Law; or
  - c) they are deceased, as evidenced by proof acceptable to the Residency Registrar.

at which point the Residency Registrar will remove that person's name from the Approved Kahnawà:ke Resident list.

## 10. PERMITS

### **General**

- 10.1 A person who is not recognized as a Kanien'kehá:ka of Kahnawà:ke or authorized as an Approved Kahnawà:ke Resident who wishes to Reside within the Territory must apply for a Permit from the Residency Registrar within thirty (30) days of Residing on the Territory.
- 10.2 A Permit Holder may apply for a renewal of their current Permit or apply for a different Permit.

### **Residency Permit**

- 10.3 In order to be eligible for a Residency Permit the Applicant must meet one of the following criteria as verified by proof acceptable to the Residency Registrar:
- a) a person who has Onkwehón:we Ancestry and:
    - i. is Married to or living in a Common-Law Relationship with a Kanien'kehá:ka of Kahnawà:ke; or
    - ii. has Immediate Family and Community Ties.
  - b) a person who has sufficient knowledge of the Kanien'kéha language and Kanien'kehá:ka culture, as evidenced by the results of a Language and Culture test taken in accordance with the *Regulation on Language and Culture Testing* and has Immediate Family and Community Ties.
- 10.4 A Residency Permit is valid for three (3) years.

### **Work/Education Permit**

- 10.5 In order to be eligible for a Work/Education Permit the Applicant must meet the following criteria as verified by proof acceptable to the Residency Registrar:
- a) a person who has Onkwehón:we Ancestry and,
    - i. is working within the Territory; or
    - ii. is attending an educational facility within proximity to the Territory.

- 10.6 Work/Education Permits will be valid for a maximum of one (1) year. If the duration of the Applicant's work or education is significantly less than one (1) year the Residency Registrar may issue a Work/Education Permit for less than one (1) year.

### **Humanitarian Permit**

- 10.7 In order to be eligible for a Humanitarian Permit the Applicant must meet one of the following criteria as verified by proof acceptable to the Residency Registrar:
- a) be terminally ill and need assistance or lodging from an Immediate Family member who is Kanien'kehá:ka of Kahnawà:ke who Resides on the Territory;
  - b) be providing assistance to a Kanien'kehá:ka of Kahnawà:ke who is terminally ill; or
  - c) be providing assistance to a Kanien'kehá:ka of Kahnawà:ke who has a disability or illness which requires specialized care;
- 10.8 The Residency Registrar will determine the length of each Humanitarian Permit to a maximum of one (1) year.

### **Renewal of Permits**

- 10.9 Any Permit Holder who wants to continue to Reside on the Territory beyond the expiration date of their current Permit, must re-apply thirty (30) days prior to the expiration date.
- 10.10 Any application for Permit renewal which is filed within ten (10) days before the expiration date is subject to additional administration fees.
- 10.11 A Permit Holder will only have the permission to Reside on the Territory while the Residency Registrar is deciding on the renewal of the Permit if the Permit Holder has submitted their request for renewal prior to the expiration date of their Permit and any delays in renewing the Permit which extend past the expiration date are due to the Residency Registrar.
- 10.12 If an application for Permit renewal is filed after the expiration date of the Permit the application will be refused and the Applicant will have to submit an application for a new Permit.
- 10.13 The Residency Registrar must review the application for renewal and provide the Applicant and the Compliance Officer with a written decision within thirty (30) days of receiving the application.

10.14 The Permit Holder has thirty (30) days to request a review of the decision of the Residency Registrar.

10.15 If the Residency Registrar does not renew the Permit, notice of the non-renewal will be given to the Compliance Officer who must send the person in question a Notice of Eviction within five (5) working days of receipt of the Residency Registrar's decision.

### **New Permit Applications**

10.16 Every six (6) years the Permit Holder must re-apply for a new Permit and may not proceed by the renewal process. The six (6) year period begins at the time the Permit Holder is issued their first Permit.

### **Expired Permits**

10.17 Once a Permit expires, if the Permit Holder has not applied for a renewal or re-applied for a new Permit, the Residency Registrar must inform the Compliance Officer of the expired Permit.

10.18 The Compliance Officer must send a notice informing the person in question to file a new application within thirty (30) days or no longer Reside on the Territory.

10.19 If the person in question continues to Reside on the Territory after the thirty (30) days' notice the Compliance Officer must issue the person a Notice of Eviction.

### **Permit List**

10.20 The Residency Registrar will keep a list of the names, addresses and telephone numbers of those persons who have been issued a Residency Permit, a Work/Education Permit or a Humanitarian Permit. This list will be updated by the Residency Registrar, as required by this Law and the Regulations.

10.21 Once a person is issued a Permit, they will remain on the Permit list until such time as:

- a) their Permit expires and has not been renewed;
- b) their Permit is revoked pursuant to this Law; or
- c) they are deceased, as evidenced by proof acceptable to the Residency Registrar

at which point the Residency Registrar will remove their name from the Permit list.

## **11. APPLICATION PROCESS FOR AUTHORIZATION AS AN APPROVED KAHNAWA:KE RESIDENT AND FOR PERMITS**

### **General**

- 11.1 Any person may, in the best interest of a Dependent Person apply on that person's behalf.
- 11.2 Complete applications must include:
- a) a signed and completed application form;
  - b) a criminal background check;
  - c) a recent passport-sized photo;
  - d) the application fee, as determined by the Regulations;
  - e) an indication of whether the application is for an Approved Kahnawà:ke Resident or for a Permit and in the case of a Permit, the type of Permit being requested;
  - f) results from the Language and Culture test where applicable;
  - g) the name and birth date of every Minor who will be Residing with the Applicant and over whom the Applicant has parental authority; and
  - h) any other information and documents required by the Regulations.
- 11.3 Dependent Persons are exempt from the language and culture test and the criminal background check.
- 11.4 Incomplete applications will be declined. The Applicant may submit another application at any time but will be required to resubmit all the documents and information listed in section 11.2, including a subsequent application fee.

### **Verification and Decision**

- 11.5 The Residency Registrar will within ten (10) days of receipt of an application summarily reject any application which:
- a) is incomplete;
  - b) does not comply with the requirements set forth in the Law and the Regulations; or

- c) could not be successful because the Applicant clearly does not possess the criteria necessary to be granted Approved Kahnawà:ke Residency authorization or the Permit for which they have applied.
- 11.6 If the application is summarily dismissed the Residency Registrar will provide written reasons to the Applicant and the Compliance Officer.
- 11.7 If the application is summarily dismissed, the Compliance Officer must send a Notice of Eviction to the Applicant if the Applicant is Residing on the Territory.
- 11.8 The Applicant has thirty (30) days to request a review of the decision of Residency Registrar.

### **Public Notice of Application**

- 11.9 If the application is not summarily dismissed, the Residency Registrar will place a public notice of the application for authorization to be an Approved Kahnawà:ke Resident or the application for any Permit under this Law.
- 11.10 The public notice must include:
  - a) the name of the Applicant;
  - b) the number of Minors or Dependent Persons that will be Residing with the Applicant;
  - c) the name of the Applicant's parents or affiliation to Kahnawà:ke;
  - d) the section of this Law under which the Applicant submitted their application; and
  - e) the deadline to receive written Objections concerning the application.
- 11.11 The public notice must be posted for thirty (30) days.

- 11.12 The deadline to receive written Objections will be the last day of the public notice.

### **Objections to Approved Kahnawà:ke Residents Applications and Permit Applications**

- 11.13 Objections may only be made by a Kanien'kehá:ka of Kahnawà:ke.
- 11.14 Within thirty (30) days of the last day of the public notice, the Residency Registrar must determine whether the Objection is admissible.
- 11.15 In order for an Objection to be considered admissible by the Residency Registrar, the Objection must be:

- a) factually based;
- b) in writing or transcribed;
- c) sworn or solemnly affirmed and signed by the Objector;
- d) in accordance with the Law and Regulations;
- e) related to one of the criteria for ineligibility under section 11.23 or one of the criteria listed in the section under which the Applicant is applying; and
- f) evidenced by proof acceptable to the Residency Registrar.

11.16 Within five (5) working days of determining that an Objection is admissible, the Residency Registrar must provide a written notice to the Applicant indicating the deadline mentioned in section 11.11 for the Applicant to provide any written representations or additional evidence with a copy of the Objection submitted.

11.17 The Applicant will have ten (10) working days to respond in writing to the Objection or to provide any additional evidence.

11.18 If the Residency Registrar determines that there is sensitive information on the Objection form, they may redact sections of this form prior to providing the copy to the Applicant. The redacted sections of the Objection form must not include the name of the Objector or any substantive information required by the Applicant in order to adequately respond to the Objection.

11.19 If the Residency Registrar determines that the Objection is not admissible, the Residency Registrar must provide a written decision with reasons to the Objector and the Applicant within thirty (30) days of receiving the Objection.

11.20 The decision rejecting an Objection as not admissible, is final and is not subject to appeal.

### **Applicant Interview**

11.21 In considering an application, the Residency Registrar may require a meeting with the Applicant, an Objector or any other person to answer questions relevant to the Application.

11.22 The interview mentioned in section 11.21 will be conducted in accordance with the process chosen by the Residency Registrar. The Applicant, the Objector or other person will be informed of the process prior to the interview.

## **Ineligibility**

- 11.23 An Applicant may be deemed ineligible and their application may be denied if the Applicant:
- a) has through an act or omission directly or indirectly, contravened a provision of this Law;
  - b) is a danger to the community;
  - c) has been involved in Criminality or Organized Criminality;
  - d) has directly or indirectly misrepresented themselves or withheld material facts relating to a matter relevant to this Law;
  - e) has committed a material breach of a Mohawk law, tradition or custom; or
  - f) for a Residency Permit, does not possess sufficient knowledge of Kanien'kehá language and Kanien'kehá:ka culture, as evidenced by the results of a Language and Culture test taken in accordance with the *Regulation on Language and Culture Testing*.

## **Final Decision on the Application**

- 11.24 In considering an application, the Residency Registrar must review all relevant materials, including any admissible Objection(s) and responses thereto from the Applicant.
- 11.25 The Residency Registrar must provide the Applicant and the Compliance Officer with a written decision regarding the merits of the application within sixty (60) days of the last day of public notice.
- 11.26 If the Residency Registrar denies the application, the Compliance Officer must send the Applicant a Notice of Eviction within five (5) working days of receipt of the Residency Registrar's decision.
- 11.27 If admissible Objection(s) were made, the Residency Registrar must also provide the Objector(s) with the written decision within sixty (60) days of the expiration of the public notice.
- 11.28 The written decision of the Residency Registrar must provide detailed reasons for approving or denying the application.

11.29 In a written decision approving an application, the Residency Registrar must provide the Applicant with the list of obligations for Approved Kahnawà:ke Residents/Permit Holders.

11.30 Once the Applicant has sworn or solemnly affirmed the Oath of Respect, the Residency Registrar will provide the Applicant with the Permit or the Approved Kahnawà:ke Resident authorization and will put their name on the Permit list or the Approved Kahnawà:ke Resident list

## **12. OBLIGATIONS OF APPROVED KAHNAWAKE RESIDENTS AND PERMIT HOLDERS**

12.1 All Approved Kahnawà:ke Residents and Permit Holders are obliged to:

- a) comply with the codes, laws and regulations applicable in the Mohawk Territory of Kahnawà:ke;
- b) respect and protect Mother Earth;
- c) respect and encourage Kanien'kéha and Kanien'kehá:ka culture; and
- d) update the Residency Registrar regarding any changes to the information provided in the application.

## **13. OATH OF RESPECT**

13.1 Prior to being issued a new Permit or authorized as an Approved Kahnawà:ke Resident the Applicant must swear or solemnly affirm an Oath of Respect, in the form provided in the Regulations, affirming that they will respect the obligations of Permit Holders/Approved Kahnawà:ke Resident, unless the person is a Dependent Person.

## **14. REVOCAION OF RESIDENCY**

### **Grounds for Revocation**

14.1 A Permit or Approved Kahnawà:ke Resident authorization may be revoked if the person:

- a) has through an act or omission directly or indirectly, contravened a provision of this Law;
- b) is a danger to the community;

- c) has been involved in Criminality or Organized Criminality;
- d) has directly or indirectly misrepresented themselves or withheld material facts relating to a matter relevant to this Law;
- e) has committed a material breach of a Mohawk law, tradition or custom; or
- f) allows a person to Reside on the Territory who does not have an entitlement to Reside pursuant to section 4 of the Law or is not an Approved Kahnawà:ke Resident or does not have a valid Permit.

### **Procedure for Revoking a Permit or Approved Kahnawà:ke Resident Authorization**

- 14.2 A Kanien'kehá:ka of Kahnawà:ke may submit a Complaint to the Residency Registrar pursuant to this Law, if they know of a Permit Holder or of an Approved Kahnawà:ke Resident who has or is in breach of section 14.1 or of a criteria under which they applied.
- 14.3 Within thirty (30) days of receiving a Complaint, the Residency Registrar must determine whether it is admissible.
- 14.4 In order for a Complaint to be considered admissible by the Residency Registrar, the Complaint must be:
- a) factually based;
  - b) in writing or transcribed;
  - c) sworn or solemnly affirmed and signed by the Complainant;
  - d) in accordance with the Law and Regulations;
  - e) related to one of the criteria under which the person had applied or the criteria for revocation under section 14.1 of this Law; and
  - f) supported by evidence.
- 14.5 Within five (5) working days of determining that the Complaint is admissible, the Residency Registrar must provide a written notice to the Permit Holder or the Approved Kahnawà:ke Resident informing them of the deadline mentioned in section 14.6 to provide any written representations or additional evidence and with a copy of the Complaint submitted.
- 14.6 The Permit Holder or the Approved Kahnawà:ke Resident will have ten (10) working days to respond in writing to the Complaint or to provide any additional evidence.

- 14.7 If the Residency Registrar determines that there is sensitive information on the Complaint form, they may redact sections of this form prior to providing the copy to the Permit Holder or the Approved Kahnawà:ke Resident. The redacted sections of the Complaint form must not include information required by the Permit Holder or Approved Kahnawà:ke Resident in order to adequately respond to the Complaint.
- 14.8 If the Residency Registrar determines that the Complaint is not admissible, the Residency Registrar must provide a written decision to the Complainant and the Permit Holder or the Approved Kahnawà:ke Resident within thirty (30) days of receiving the Complaint with reasons for the decision.
- 14.9 The decision rejecting a Complaint is final and is not subject to appeal.

### **Final Decision on Revocation**

- 14.10 Prior to making a final decision on the merits of the revocation, the Residency Registrar must review all relevant material presented by the Complainant and the Permit Holder or Approved Kahnawà:ke Resident and may also request additional relevant information, including requesting an interview with the Complainant, the Permit Holder, Approved Kahnawà:ke Resident or any other person.
- 14.11 Within thirty (30) days of the decision on the admissibility of the Complaint, the Residency Registrar must provide the Complainant and the Permit Holder or Approved Kahnawà:ke Resident with a written decision which must include detailed reasons for maintaining or revoking the Permit Holder's Permit or the Approved Kahnawà:ke Resident's authorization to Reside on the Territory.
- 14.12 If the Residency Registrar has decided to revoke the Permit or the Approved Kahnawà:ke Resident authorization to Reside on the Territory, the Residency Registrar must include and send a Notice of Revocation indicating the date of revocation to the Permit Holder or the Approved Kahnawà:ke Resident and the Compliance Officer.
- 14.13 The Permit Holder, Approved Kahnawà:ke Resident or Complainant have thirty (30) days to request a review of the Residency Registrar's decision.
- 14.14 The Compliance Officer must send the person whose Permit or authorization has been revoked a Notice of Eviction within five (5) working days of receipt of the Residency Registrar's decision.
- 14.15 The Residency Registrar must remove the name of the person who has been revoked from the Permit list or the Approved Kahnawà:ke Resident list on the date of revocation indicated on the Notice of Revocation.

## 15. EVICTION

### **General**

15.1 Anyone Residing on the Territory who does not have an entitlement to Reside pursuant to section 4 of this Law, is not an Approved Kahnawà:ke Resident or does not have a valid Permit, may be subject to an Eviction Order.

### **Complaint for Eviction**

15.2 A Kanien'kehá:ka of Kahnawà:ke may submit a Complaint for Eviction to the Compliance Officer in accordance with this Law, if they know of someone Residing in the Territory who does not have an entitlement to Reside under section 4 of this Law, is not an Approved Kahnawà:ke Resident or does not have a valid Permit.

15.3 Upon receiving a Complaint, the Compliance Officer must provide a written notice to the person in question with a copy of the Complaint submitted and of the deadline for the person in question to provide any written representations or additional evidence.

15.4 If the Compliance Officer determines that there is sensitive information on the Complaint form, they may redact sections of this form prior to providing the copy to the person in question. The redacted sections of the Complaint form must not include the name of the Objector or any substantial information required by the person in order to adequately respond to the Complaint.

15.5 The written notice in section 15.3 must also inform the person of their right to apply for a Permit or for authorization to be an Approved Kahnawà:ke Resident or for recognition as a Kanien'kehá:ka of Kahnawà:ke within ten (10) working days.

15.6 The person will have ten (10) working days, from receipt of the notice, to respond in writing to the Complaint or to provide any additional evidence to the Compliance Officer.

15.7 If the person applies for a Permit, for authorization as an Approved Kahnawà:ke Resident or for recognition as a Kanien'kehá:ka of Kahnawà:ke, within ten (10) working days of receiving the written notice in section 15.3, the Compliance Officer will close the file and inform the person and the Complainant that the file will proceed by the application process and be decided by the Residency Registrar.

15.8 If the person has not applied for a Permit, for authorization as an Approved Kahnawà:ke Resident or for recognition as a Kanien'kehá:ka of Kahnawà:ke,

within ten (10) working days of receiving the written notice in section 15.3, the Compliance Officer must determine whether the Complaint is admissible.

- 15.9 In order for a Complaint to be considered admissible by the Compliance Officer, the Complaint must be:
- a) factually based;
  - b) in writing or transcribed;
  - c) sworn or solemnly affirmed and signed by the Complainant;
  - d) in accordance with the Law and Regulations;
  - e) related to one of the criteria for eviction under section 15.2; and
  - f) supported by evidence.
- 15.10 If the Compliance Officer determines that the Complaint is not admissible, they must provide a written decision to the Complainant within thirty (30) days of receiving the Complaint.
- 15.11 The Compliance Officer's decision in section 15.10 is final and without appeal.
- 15.12 If the Compliance Officer has decided that a Complaint is admissible, and the person does not have the entitlement or permission to Reside on the Territory, the Compliance Officer must enclose with their reasons for decision a Notice of Eviction.
- 15.13 The person who is the subject of a Notice of Eviction has thirty (30) days to request a review of the Compliance Officer's decision in section 15.12.

### **Notice of Eviction**

- 15.14 A Notice of Eviction must be delivered by hand to the person in question and must include:
- a) the name of the person being evicted;
  - b) written reasons for the eviction;
  - c) the date the person must leave the Territory;
  - d) the date, time and place when an eviction order will be sought before a Justice and the person's right to be present and be heard; and

- e) any other information as required by this Law and Regulations.
- 15.15 The Compliance Officer must send a copy of any Notice of Eviction or any decision of the Community Review Board or Justice upholding of Revocation or a Notice of Eviction to MCK Justice Services.
- 15.16 If applicable, the Compliance Officer must send a copy of the Notice of Eviction to the landlord who is renting the property to the person who has received a Notice of Eviction.

### **Eviction Orders**

- 15.17 The Justice has the authority to issue an Eviction Order against any person who has received a Notice of Eviction and to award costs for the execution of the Eviction Order.
- 15.18 The decision of the Justice may be appealed to the Kahnawà:ke Court of Appeal.
- 15.19 The person against whom the Eviction Order is made must be served with a copy of the Eviction Order when it is made.
- 15.20 The Eviction Order comes into force the day the Eviction Order is issued.
- 15.21 Once the Eviction Order is issued, the person against whom it was issued must leave the Territory and take all of their movable property within ten (10) working days.
- 15.22 Any movable property which has not been removed prior to the enforcement of the Eviction Order is deemed to have been abandoned.
- 15.23 If the person against whom an Eviction Order has been issued has not left the Territory within ten (10) working days, a bailiff has the authority to remove the person.
- 15.24 In executing the Eviction Order, the bailiff has the right to enter onto private property and remove the person and or their movable property.
- 15.25 Movable property which is not exempt from seizure may be sold to pay for any costs related to the eviction.
- 15.26 The removal of a person from the Territory in accordance with an Eviction Order must be temporarily stayed if:
  - a) the person is the parent or Guardian of one or more children under the age of six (6 who Reside with the person); and

- b) the decision to remove the person is issued between November 1st and April 1st.

**16. REVIEW OF DECISIONS OF THE RESIDENCY REGISTRAR OR THE COMPLIANCE OFFICER**

- 16.1 The Community Review Board 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.
- 16.2 The Community Review Board may quash, confirm or vary the contested decision and, if appropriate, make the decision which, in its opinion, should have been made initially.
- 16.3 Proceedings for review are brought before the Community Review Board by submitting a completed application with a copy of the decision within thirty (30) days of receiving the written decision.
- 16.4 The application must state the reasons for the application, the conclusions sought and any other information required by this Law and Regulations.
- 16.5 The administrative assistant of the Community Review Board must send a copy of the application to the other implicated parties, who may respond to it in writing within thirty (30) days of receiving the application.
- 16.6 The Community Review Board will proceed on the basis of the record; it may, however, if it considers it appropriate or if a party requests it, hear the parties.
- 16.7 A properly initiated review stays execution of the decision on review.

**17. APPEAL OF DECISIONS OF THE COMMUNITY REVIEW BOARD**

- 17.1 Decisions rendered by the Community Review Board may be appealed to the Justice on an interim basis in accordance with this Law, until such time as the Court of Kahnawà:ke is operational pursuant to the *Kahnawà:ke Justice Act*. Proceedings for appeal are brought before the Justice by submitting a completed application with a copy of the decision within thirty (30) days of receiving the written decision.
- 17.2 The application must state the grounds invoked in support of the application, the conclusions sought and must contain any other information required by this Law and Regulations.

- 17.3 The court clerk must send a copy of the application to the other parties, who may respond to it in writing within thirty (30) days of receiving it.
- 17.4 The Justice will proceed on the basis of the evidence presented before the Community Review Board.
- 17.5 No appeal lies from the decision of the Justice.
- 17.6 A properly initiated appeal stays execution of the decision on appeal.

## 18. PENALTIES

18.1 Anyone who:

- a) knowingly provides Residency to someone who does not have an entitlement to Reside pursuant to section 4 of the Law or is not an Approved Kahnawà:ke Resident or does not have a valid Permit;
- b) illegally Resides on the Territory; or
- c) does not respect an Eviction Order;

is guilty of an offence and shall be liable on summary conviction to:

- i. A minimum fine of \$400.00 for the first offence;
- ii. A minimum fine of \$800.00 for the second; and
- iii. A minimum fine of \$1000.00 for each subsequent offence.

18.2 Every day a person is in contravention of this Law constitutes a separate offence.

## 19. ENFORCEMENT

19.1 The Kahnawà:ke Peacekeepers have the sole and exclusive authority to enforce this Law.

19.2 The Justice has sole and exclusive jurisdiction to hear and decide all matters related to this Law until such time as the Court of Kahnawà:ke is operational under the *Kahnawà:ke Justice Act*.

19.3 If the Justice finds any section of this Law to be invalid the decision does not render this Law invalid in its entirety.

## 20. GENERAL PROVISIONS

### **Right to Counsel**

20.1 All parties have the right to legal counsel before the Community Review Board and the Justice.

### **Extension of Timelines by Registrar**

20.2 The Residency Registrar or Compliance Officer may decide to extend any of the time periods or deadlines set out in this Law or the Regulations if they are convinced that it is in the interest of fairness to do so.

20.3 When there is a change to the time periods or deadlines a written notice must be provided to the parties prior to the date mentioned in the original notice, informing them of the change.

### **Publication of Decisions**

20.4 The following must be published within five (5) working days of the decision:

20.5 a decision to proceed with an application following the verification of the information by the Residency Registrar;

20.6 a decision granting a Permit or authorization as an Approved Kahnawà:ke Resident; and,

20.7 a decision renewing a Permit.

20.8 The publication must include the following information:

a. the decision;

b. the name of the Applicant, Approved Kahnawà:ke Resident or Permit Holder;

c. the section under which they applied and were granted their authorization or Permit; and

d. in the case of Permits, the expiration date of the Permit.

## **Annual Reports to Council**

- 20.9 On or before January 31 each year, the Residency Registrar must provide the Mohawk Council of Kahnawà:ke with a written report listing all persons Residing in the Territory as Approved Kahnawà:ke Residents as well as a list of all persons who have been issued a Permit (including the category of Permit and the expiry date), and the identity of any Applicants whose applications have been declined.
- 20.10 On or before January 31 each year, the Residency Registrar must provide the Mohawk Council of Kahnawà:ke with a written report listing all revoked Approved Kahnawà:ke Residents as well as a list of all persons whose Permits have been revoked.
- 20.11 On or before January 31<sup>st</sup> the Compliance Officer must provide the Mohawk Council of Kahnawà:ke with a written report listing all those persons who have been evicted.

## **Written Notice**

- 20.12 Unless otherwise stated in this law, any notices or decisions 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.
- 20.13 In the event a notice cannot be sent by registered mail, or the recipient fails or refuses to sign for it within fifteen (15) working days from the date on which the registered mail was sent, the Residency Registrar, Compliance Officer, Community Review Board or the Justice may direct that the required notice be given by bailiff.

## **21. REGULATIONS**

- 21.1 The Mohawk Council of Kahnawà:ke may, by Mohawk Council Executive Directive enact the Regulations necessary for the implementation of this Law, including:
- a) the procedure for considering and deciding an application for a Permit;
  - b) the procedure, content and form of Language and Culture testing;
  - c) the procedure for considering and deciding an application for an Approved Kahnawà:ke Resident;
  - d) the procedure for considering and deciding a Complaint for revocation or for eviction;

- e) the form and content of the Oath of Respect
- f) the fee for Approval Kahnawà:ke Residents and Permit application; and
- g) such other Regulations that may be necessary to implement the provisions of this Law.

21.2 The Mohawk Council of Kahnawà:ke may consult with the Residency Registrar and or the Compliance Officer before enacting Regulations.

21.3 Copies of all Regulations enacted by the Mohawk Council of Kahnawà:ke will be provided to the Residency Registrar and Compliance Officer and will be made available to the Kanien'kehá:ka of Kahnawà:ke, Approved Kahnawà:ke Residents and to Permit Holders.

## **22. AMENDMENTS**

22.1 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.

## **23. ENACTMENT AND COMING INTO FORCE**

23.1 Further to the will of the Kanien'kehá:ka of Kahnawà:ke, this Law is enacted on 17, Ohiaríha/June 2019 by MCR #1/2019-2020.