

Internal Complaints Process for the Council of Chiefs – for Complaints Internal to the Ratitsénhaienhs

Version 1.0 - Approved June 24, 2024

Background

The *Disciplinary Measures Regulations* [R.R.L. c. E-1 r.t], is the current regulation that applies to the Mohawk Council of Kahnawà:ke (“MCK”) Ratitsénhaienhs (formerly referred to as the “Council of Chiefs”), with respect to the conduct of Ietsénhaienhs/Ratsénhaienhs (formerly referred to as “Council Chief”). However, the *Disciplinary Measures Regulations* limits the availability of measures solely to Kahnawa’kehró:non, and specifically exempts complaints from fellow Ietsénhaienhs/Ratsénhaienhs and employees of the MCK.

To address gaps in governance policy and ensure there is comprehensive policy governing the processes and procedures of the MCK Ratitsénhaienhs, the Ratitsénhaienhs directed for a MCK Governance Project. The MCK Governance Project will undertake to develop and implement operational and governance policy for the Ratitsénhaienhs.

While this work is underway, and to ensure transparency, objectivity and good governance, the Ratitsénhaienhs further directed for the development of measures that should apply to situations where complaints or concerns of individual Ietsénhaienhs/Ratsénhaienhs conduct may arise from fellow Ietsénhaienhs/Ratsénhaienhs and/or employees of the MCK. This led to the drafting and adoption of the Disciplinary Process for Complaints Internal to the MCK, which pertains solely to the complaints by employees against Ietsénhaienhs/Ratsénhaienhs.

However, there continues to be a gap in policy with respect to the responsibility of the Ratitsénhaienhs to address the conduct of individual Ietsénhaienhs/Ratsénhaienhs. This responsibility is rooted in the fact that the community has elected these individuals to act faithfully, conscientiously, honestly, loyally, and to be answerable and accountable to Kahnawa’kehró:non, to every other Ietsénhaienhs/Ratsénhaienhs and to the Ratitsénhaienhs as a whole.

1. Accountability

1.1 Ietsénhaienhs/Ratsénhaienhs may be held accountable for conduct which seriously breaches the roles, responsibilities and expectations set out in official documents that pertain to the Ratitsénhaienhs and Ietsénhaienhs/Ratsénhaienhs, including, but not limited to:

- a. *Regulations for the operations of the Council of Chiefs*
- b. *Administration guidelines for the Council of Chiefs*
- c. *Oath of office*
- d. *Terms of reference for Ietsénhaienhs/ Ratsénhaienhs*

- e. *Terms of Reference for the Ohén:ton Í:iente/Í:rate ne Ratitsénhaienhs*
- f. *Code of conduct*
- g. *Relationship Framework between the MCK Executive Director and MCK Ratitsénhaienhs & Ohén:ton Í:rate/Í:iente ne Ratitsénhaienhs*

2. Complaints

- 2.1 A Ietsénhaienhs/Ratsénhaienhs, several Ietsénhaienhs/Ratsénhaienhs, or the Ratitsénhaienhs, should make efforts to initially address any alleged breach of conduct by informally addressing the matter with the Ietsénhaienhs/Ratsénhaienhs in question.
- 2.2 If after reasonable efforts have been taken to address the situation between Ietsénhaienhs/Ratsénhaienhs informally and a Ietsénhaienhs/Ratsénhaienhs is not satisfied with the outcome, a review of the conduct of a Ietsénhaienhs/Ratsénhaienhs may be prompted by a complaint formally filed by a Ietsénhaienhs/Ratsénhaienhs, several Ietsénhaienhs/Ratsénhaienhs, or by the Ratitsénhaienhs by putting the complaint in writing.
- 2.3 Complaints will be filed with the General Manager of the Office of the Council of Chiefs (to be replaced by the Director of the OCC, herein after referred to as “Director of OCC”) who will serve as the administrative intake for such complaints.
- 2.4 Complaints must clearly identify the alleged misconduct and include all relevant facts, circumstances and information pertaining to the complaint.
- 2.5 Complaints may be received for matters that have taken place within 6 months, or whereby it is demonstrated that the complainant Ietsénhaienhs/Ratsénhaienhs has only learned of relevant circumstances leading to the complaint within 6 months of formally filing the complaint.
- 2.6 In exceptional circumstances, complaints that are filed after the 6-month time period can be heard if the complainant Ietsénhaienhs/Ratsénhaienhs can prove that there were extenuating circumstances for the delay.

3. Review of the Complaint

- 3.1 Upon receipt of the complaint, the Director of OCC must provide all relevant documents and information to the Governance Portfolio Chiefs who will make a determination on the admissibility of the complaint.
- 3.2 If there is a conflict of interest with one or more of the Governance Portfolio Chiefs, another Ietsénhaienhs/Ratsénhaienhs must be selected to replace that Ietsénhaienhs/Ratsénhaienhs
- 3.3 A complaint will be deemed admissible if it is:

- a. factually based;
 - b. in writing;
 - c. signed by the complainant(s), and;
 - d. related to the conduct established in the documents listed in section 1.1.
- 3.4 The Governance Portfolio Chiefs may consult Legal Services or external legal counsel if they deem it necessary.
- 3.5 If the complaint is frivolous, vexatious or clearly without merit, it will be deemed as inadmissible and Governance Portfolio Chiefs will inform the complainant Ietsénhaienhs/Ratsénhaienhs in writing.
- 3.6 If it is deemed to be admissible, the Governance Portfolio Chiefs must inform the respondent Ietsénhaienhs/Ratsénhaienhs in writing with the relevant facts, information and any evidence received pertaining to the complaint.
- 3.7 If it is admissible, the Governance Portfolio Chiefs must inform the Ohén:ton Í:iente/Í:rate ne Ratitsénhaienhs (formerly referred to as the “Grand Chief”)
- 3.8 The Ohén:ton Í:iente/Í:rate ne Ratitsénhaienhs shall inform the Ratitsénhaienhs of the complaint.
- 3.9 If necessary, on the recommendation of the Governance Portfolio Chiefs, the Ratitsénhaienhs may impose any temporary measures required prior to a decision on the merits of the complaint.
- 3.10 The Ratitsénhaienhs may further inquire into the nature and scope of the alleged misconduct and seek out the feasibility of mediation as a remedy.
- 3.11 In the event that mediation is not feasible or does not remedy the complaint, the Ohén:ton Í:iente/Í:rate ne Ratitsénhaienhs must establish a Complaint Committee to review the complaint and to decide or recommend, if necessary, disciplinary actions.
- 3.12 The Complaint Committee will be comprised of three former Ietsénhaienhs/Ratsénhaienhs who remain eligible to the criteria for the position of Ratitsénhaienhs, as per the *Kahnawà:ke Election Law* and not have been removed from office during their term served, selected on a case-by-case basis, and will be bound to a confidentiality agreement.
- 3.13 If the complaint concerns the Ohén:ton Í:iente/Í:rate ne Ratitsénhaienhs, it will be the Governance Portfolio Chiefs that determine the Complaint Committee.
- 3.14 The Complaint Committee will call a meeting within fourteen(14) days of the committee being selected.

- 3.15 The Complaint Committee may also recommend that the matter be referred to the appropriate enforcement agency and/or refer it to an independent inquiry.
- 3.16 The respondent Ietsénhaienhs/Ratsénhaienhs will have fourteen (14) days following the selection of the Complaint Committee to prepare written or oral submissions pertaining to the complaint.
- 3.17 The Complaint Committee must respect the procedural fairness required and ensure that the respondent Ietsénhaienhs/Ratsénhaienhs and the complainant Ietsénhaienhs/Ratsénhaienhs have both been provided with a fair process. This includes, but is not limited to:
- a. no undue delays,
 - b. fair and impartial decision-making,
 - c. the right to be heard, and
 - d. the right to reasons for the decision.
- 3.18 The Complaint Committee must decide in writing if the complaint is well founded and decide upon appropriate discipline, if their decision is that the appropriate discipline is that of 4.1(a), 4.1(b), 4.1(c) or 4.1(d).

4. Disciplinary Action

- 4.1 Disciplinary actions may include, but are not limited to:
- a. temporary measures prior to final decision
 - b. letter of reprimand
 - c. suspension with or without pay
 - d. fine or monetary restitution
 - e. loss of privileges related to position
 - f. public disclosure of misconduct
 - g. act of censure
 - h. removal from office.
- 4.2 In deciding on disciplinary action, or when recommending disciplinary action, the Complaint Committee must ensure that disciplinary actions are commensurate to the nature and degree of the misconduct.
- 4.3 Should the Complaint Committee establish a decision for appropriate discipline pursuant to 3.18, the Complaint Committee must present their findings and decision to the Ratitsénhaienhs.

- 4.4 With respect to more serious breaches, whereby the Complaint Committee finds that the discipline should be either 4.1(e), 4.1(f), 4.1(g), or 4.1(h), the Complaint Committee must provide a detailed report of findings to the Council of Chiefs with a recommendation of disciplinary action and reasons for that recommendation.
- 4.5 Pursuant to 4.4, the Ratitsénhaienhs must impose one of the sanctions provided in s. 4.1(e)-4.1(h).
- 4.6 The Ratitsénhaienhs will make all efforts to ensure that disciplinary actions are commensurate to the nature and degree of the misconduct.
- 4.7 Where the recommended action is 4.1(h), removal from office, there must be unanimity by all the Ratitsénhaienhs who are not directly implicated in, or in a conflict of interest with parties pertinent to, the complaint.
- 4.8 The Ratitsénhaienhs may inform the community of the complaint, after the decision on the merits of the complaint by either the Complaint Committee or the Ratitsénhaienhs.
- 4.9 The Ratitsénhaienhs must inform the community when the complaint has resulted in the disciplinary action of 4.1 (e), 4.1 (f), 4.1 (g), or 4.1 (h).
- 4.10 In making the decision to inform the community, the Ratitsénhaienhs must inform the complainant and the respondent of the publication.
- 4.11 A copy of any report, disciplinary action or decision that results from the complaint will be added to the Personnel File of the Ietsénhaienhs/Ratsénhaienhs pursuant to section 17.1 of the Administration Guidelines for the Council of Chiefs.

5. Review of Decision & Appeal

- 5.1 Within 30 days of receiving the decision of the on the admissibility of the complaint under section 3.5, the complainant Ietsénhaienhs/Ratsénhaienhs may request a review of the decision that the complaint is inadmissible.
- 5.2 Within 30 days of the decision on the merits of the complaint, the complainant Ietsénhaienhs/Ratsénhaienhs may request a review of the decision of the complaint committee and of the sanctions.
- 5.3 The respondent Ietsénhaienhs/Ratsénhaienhs may request a review within 30 days of the discipline, excluding that of removal from office under section 4.1(i).

- 5.4 The respondent Ietsénhaienhs/Ratsénhaienhs may request an appeal within 30 days of a decision of the Ratitsénhaienhs for removal of office under section 4.1(i).
- 5.5 All reviews and appeals will be resolved by Kahnawà:ke Communal Arbitration Procedure with the following amendments:
- a. The dispute resolution process is compulsory and the parties may not waive their right to arbitration.
 - b. A single arbitrator knowledgeable on governance and ethics will be appointed by the parties or, in the absence of an agreement by the parties after 14 days, by the Court of Kahnawà:ke.
 - c. Arbitrators may be compensated for their services
 - d. The arbitrator must provide a detailed decision in writing within six months of the arbitrator being selected.

6. Application

- 6.1 This document and any subsequent amendments will be approved by Mohawk Council Executive Directive (MCED).
- 6.2 The Ratitsénhaienhs will undertake a review of this document at the end of their term of office and recommend any amendments to the incoming Ratitsénhaienhs for consideration/approval at the beginning of their term of office.
- 6.3 This document and all provisions contained within it are superseded by the *Mohawk Council of Kahnawà:ke Election Law* K.R.L. c. E-1 and are subject to consistency with the Law as it may be amended.