

REGULATION RESPECTING THE INSTITUTION AND MANAGEMENT OF THE ADMINISTRATIVE TRIBUNAL

K.R.L. c., J-1, r.3
Enacted by MCED #117/2023-2024 on 25, Enniskó:wa/March 2024

SECTION I - GENERAL

1. PURPOSE

1.1 The purpose of this regulation is to establish the rules for the institution and management of the Administrative Tribunal.

2. DEFINITIONS

2.1 **Decision-maker** means a member of the Administrative Tribunal.

2.2 **Government or government entity** means, for the purposes of this regulation, the Mohawk Council of Kahnawà:ke or a public body performing a function of government in Kahnawà:ke.

2.3 **Justice Services** means the Justice Services Division of the Mohawk Council of Kahnawà:ke.

2.4 **Lead Decision-maker** means the Decision-maker who, in addition to the regular duties of a Decision-maker, has certain administrative responsibilities attributed to them by law or regulation.

2.5 **Tribunal** means the Administrative Tribunal.

SECTION II - INSTITUTION OF THE TRIBUNAL

3. COMPOSITION

3.1 The Tribunal will be composed of independent and impartial Decision-makers appointed by the Mohawk Council of Kahnawà:ke in accordance with the *Regulation Respecting the Selection and Appointment of Decision-makers to the Administrative Tribunal*. There will be a pool of at least three (3) qualified Decision-makers with formal legal training.

3.2 To serve as a Decision-maker, a person must:

- a) be at least 18 years old;
- b) not have been convicted of an indictable offence unless they meet one of the exceptions listed at article 3.3 of this regulation;
- c) not have been convicted of a summary conviction offence within the last six (6) years.

- d) have formal legal training, which means having completed an undergraduate degree in law at a recognized North American University, if necessary; and
- e) be in good standing with their professional order or have retired in good standing, if applicable.

The term “retired in good standing” refers to how a member of a professional order, at the time of their retirement, was not under investigation, or subject to discipline, for any violation of their code of conduct.

Decision-makers will also be required to have any additional expertise that may be identified by enabling legislation.

3.3 A person convicted of an indictable offence will remain eligible to be appointed a Decision-maker if:

- a) they have received a pardon or record suspension; or
- b) it is determined by the Commissioner of Justice that appointment of the person would not undermine the integrity of the Tribunal or the Kahnawà:ke justice system. When making this determination, the Commissioner of Justice will consider the following factors:
 - i) the nature and circumstances surrounding the offence for which the person was convicted;
 - ii) the time elapsed since the conviction. The time elapsed must be no less than 10 years from the date their sentence is completed;
 - iii) whether they were convicted of any other offences; and
 - iv) any other relevant factors.

3.4 Conviction for a tobacco-related charge including but not limited to sale, possession, manufacture or transport will not be considered a criminal offense for the purposes of determining eligibility to serve on the Tribunal.

3.5 The following will be considered incompatible functions with the role of Decision-maker:

- a) being employed in the public service of the Mohawk Council of Kahnawà:ke;
- b) acting as a lawyer, legal counsel, notary or Peacekeeper within the Mohawk Territory of Kahnawà:ke;
- c) holding office as a Chief of the Mohawk Council of Kahnawà:ke; and
- d) holding office as Justice of the Peace or Judge in a Kahnawà:ke court.

4. DIVISIONS

4.1 The Tribunal will consist of two (2) divisions:

- a) the Public Matters Division; and
- b) the Private Disputes Division.

4.2 The Public Matters Division will hear and decide proceedings between one (1) or more individual(s) and the government or a government entity. Notably, it will review administrative decisions taken by the government or a government entity and, where appropriate, provide redress.

4.3 The Private Disputes Division will hear and decide disputes on matters governed by Kahnawà:ke laws of public order:

- a) between two (2) or more individuals; or
- b) between one (1) or more individual(s) and a legal person other than a government or government entity.

Laws of public order are enacted in the public interest, are imperative and cannot be set aside, even by an express provision of a contract.

5. OATH OF OFFICE

5.1 Before taking office, every Decision-maker will solemnly affirm the following:

“I, _____, do solemnly affirm that I will exercise the powers conferred upon me as a Decision-maker appointed to the Administrative Tribunal faithfully, diligently and impartially. I will fulfill my duties to the best of my knowledge and ability in accordance with the code of conduct and terms of reference for Decision-makers appointed to the Administrative Tribunal. I will refrain from engaging in conduct that would undermine public confidence in the Administrative Tribunal and the Kahnawà:ke Justice System.”

The oath will be taken before the Justice Portfolio Chief and sent to the Commissioner of Justice.

6. TERM OF OFFICE

6.1 Decision-makers will be appointed for a five (5) year term by the Mohawk Council of Kahnawà:ke. Appointment will be made by Mohawk Council Executive Directive.

However, the Mohawk Council of Kahnawà:ke may appoint a Decision-maker for a shorter term for serious reasons or if special circumstances require it. Serious reasons and special circumstances may include but not be limited to being unable to complete a full five (5) year mandate due to employment obligations or declining health.

6.2 The Mohawk Council of Kahnawà:ke may reappoint a Decision-maker for an additional term(s) if there are no considerations that would preclude their reappointment. There are no limits on the number of terms for which the Decision-maker can be reappointed.

- 6.3 The term of office for a Decision-maker will terminate before the end of their five (5) year term if:
- a) the Decision-maker retires or resigns;
 - b) the Decision-maker is no longer capable or no longer meets the requirements to hold office;
 - c) the Decision-maker is removed from office in accordance with the *Regulation Respecting Disciplinary Measures for Decision-Makers Appointed to the Administrative Tribunal*; or
 - d) the office ceases to exist.
- 6.4 Decision-makers will submit annually to the Commissioner of Justice a Statement of Intent and Declaration of Continued Qualifications and Aptitude to continue as a Decision-maker.
- 6.5 A Decision-maker may resign by providing the Commissioner of Justice reasonable notice in writing and must also send a copy to the Justice Portfolio Chief.
- 6.6 Any Decision-maker who has retired or resigned will be requested by the Lead Decision-maker to conclude cases they began to hear but have not yet decided. They will be a supernumerary Decision-maker for the time required.
- In the event that it is the Lead Decision-maker who has retired or resigned, the request to conclude the case will be made by the Commissioner of Justice.
- 6.7 Where a Decision-maker is unable to continue a hearing on a supernumerary basis, a replacement Decision-maker will be selected by the Lead Decision-maker to continue the hearing pursuant to article 44.1 of the *Regulation Respecting the Rules of the Administrative Tribunal*.
- In the event that it is the Lead Decision-maker who is unable to continue the hearing, the replacement Decision-maker will be selected by the Commissioner of Justice.
- 6.8 A Decision-maker whose term of office has ended is prohibited from appearing before the Tribunal in any capacity other than as a petitioner or respondent for six (6) months after leaving office or after releasing any outstanding decisions, whichever is later.
- 6.9 A Decision-maker whose term of office has ended will not take improper advantage of past office after ceasing to be a member of the Tribunal.

SECTION III - MANAGEMENT AND SUPPORT

7. ADMINISTRATION

- 7.1 The Commissioner of Justice is responsible for the overall administration and general management of the Tribunal.

8. SUPPORT SERVICES

- 8.1 Justice Services will provide support services to the Tribunal, including the services of a clerk who will be responsible for:

- a) coordinating meetings and hearings;
- b) attending hearings in their entirety;
- c) recording entire hearings with a recording device;
- d) taking notes at hearings;
- e) preparing the minutes of hearings; and
- f) circulating the minutes of hearings, within ten (10) days of the hearing, to the Decision-maker(s) for approval.

8.2 The records of the Tribunal will be maintained by Justice Services.

All documents and related materials pertaining to a case will be kept for a period of no less than one (1) year from the date of final judgment.

9. LEAD DECISION-MAKER

9.1 The Decision-makers will select a Lead Decision-maker amongst themselves. The Lead Decision-maker must have formal legal training and will have the same responsibilities as their peers in addition to any administrative duties attributed to them by law or regulation.

9.2 The Lead Decision-maker will supervise and direct the activities of the Tribunal, including the following:

- a) fostering the participation of Decision-makers in formulating principles to ensure a high level of decision-making;
- b) coordinating the activities of and assigning cases to Decision-makers who will comply with these directives;
- c) ensuring the observance of the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*;
- d) imposing corrective or remedial measures on Decision-makers in accordance with the *Policy on Corrective & Remedial Measures for Decision-makers Appointed to the Administrative Tribunal*.
- e) promoting the professional development of Decision-makers; and
- f) periodically evaluating the knowledge and skills of Decision-makers in performing their duties, their contribution to processing cases and to achieving the objectives of the Tribunal.

10. ANNUAL REPORT

10.1 Within three (3) months after the end of each fiscal year, the Lead Decision-maker will submit to the Commissioner of Justice an annual report of the activities of the Tribunal from that year. The annual report will include but not be limited to the following:

- a) a summary of activities, accomplishments, decisions and challenges from the preceding fiscal year;
- b) key facts of interest and statistics, including:
 - i) the number of days hearings were held, and the average number of hours devoted to them;
 - ii) the number of postponements granted;
 - iii) the nature and number of cases filed before the Tribunal in private disputes that were referred to Skén:nen Aonsón:ton for mandatory review and assessment, and the number of such cases that were resolved through alternative dispute resolution;
 - iv) the number of cases heard, their nature and the places and dates of any hearings;
 - v) the number of cases taken under advisement, their nature and the time devoted to advisement;
 - vi) the number of decisions rendered; and
 - vii) the length of time from the date of the application until the beginning of the hearing or the rendering of the final decision;
- c) the number and date of general Tribunal meetings;
- d) the number, nature and outcome of all complaints received from any person against a Decision-maker;
- e) any recommendations which the Lead Decision-maker may wish to make to the Commissioner of Justice to enable the Tribunal to fulfill its mandate more efficiently and effectively. These recommendations may concern, but are not limited to budgetary requirements, provisions of the *Kahnawà:ke Justice Act*, regulations, policies, programs and administrative procedures for the improvement of the Tribunal; and
- f) objectives for the following fiscal year, including steps to improve access to the Tribunal and the quality and promptness of its decision-making process.

SECTION IV - FINAL

11. COMING INTO FORCE

11.1 This regulation comes into force on the date fixed by Mohawk Council Executive Directive.

12. AMENDMENT

12.1 This regulation may be amended by Mohawk Council Executive Directive in accordance with the Community Decision-Making and Review Process for regulations.