

TERMS OF REFERENCE FOR DECISION-MAKERS APPOINTED TO THE ADMINISTRATIVE TRIBUNAL

Approved by Kahnawà:ke Justice Commission Resolution No.4-2024 on April 4, 2024

OVERVIEW

The Administrative 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*.

MANDATE

Decision-makers are responsible for reviewing decisions of the administrative branch of Kahnawà:ke government and where appropriate to correct an error or fault. In doing so, they will 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 absence of jurisdiction, or, if there was a mistake of law.

They will also hear and decide private disputes on matters governed by Kahnawà:ke laws of public order, specifically disputes between two (2) or more individuals, or one (1) or more individual(s) and a legal person other than a Kahnawà:ke government or government entity.

Their mandate is carried out in accordance with the *Kahnawà:ke Justice Act* and related regulations, and any other Kahnawà:ke laws, regulations, policies or procedures that reference the Administrative Tribunal.

Decision-makers will exercise quasi-judicial powers when adjudicating and may hear a wide range of subject-matter as set out in Kahnawà:ke laws, regulations, policies and other rules.

Decision-makers have full authority over the conduct of their hearings. They will, in conducting the proceedings, be flexible and ensure the merits of a case will be heard despite any procedural errors provided it is in the interests of justice and does not impact procedural fairness.

They will apply the rules of evidence and procedure found in the *Regulation Respecting the Rules of the Administrative Tribunal*. In the absence of a provision applicable to a particular situation, they may apply any procedure consistent with the rules of natural justice.

Subject to enabling legislation, the Decision-maker may sit as part of a three-person panel.

Decision-makers work under the general direction of the Lead Decision-maker.

Decision-makers are also mandated to act as arbitrators pursuant to the *MCK Disciplinary Measures Regulations*. When acting as an arbitrator, they will hear and decide all complaints against Chiefs referred to it by the Complaints Officer. In doing so, they will apply the procedural rules found in the *MCK Disciplinary Measures Regulations*.

Decision-makers will comply with the *Code of Conduct for Decision-makers Appointed to the Administrative Tribunal*, their terms of reference, their oath of office, their confidentiality

agreement and any other applicable standards or duties set out in legislation, regulations, codes, policies or procedures.

Decision-makers will ensure that, in performing their duties, conducting their meetings and making their decisions, they 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.

ADMINISTRATIVE SUPPORT AND RESOURCES

MCK Justice Services will provide support services to the Administrative Tribunal, including the services of a clerk.

ACCOUNTABILITY

Accountable to the Commissioner of Justice for administrative purposes.

ELIGIBILITY

To serve as a Decision-maker, a person must meet the eligibility criteria set out at articles 3.2-3.5 of the *Regulation Respecting the Institution and Management of the Administrative Tribunal*.

DURATION

The term of office will be for a five (5) year term upon appointment by the Mohawk Council of Kahnawà:ke.

Decision-makers may be reappointed 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.

For additional information, see articles 6.1-6.7 of the *Regulation Respecting the Institution and Management of the Administrative Tribunal*.

REMUNERATION

Contractual basis for services rendered on an "as needed" basis at the rate fixed by Mohawk Council Executive Directive.

The rate fixed by Mohawk Council Executive Directive will also apply to any official meetings or required training attended by Decision-makers.

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