

Kahnawà:ke Policy on Archaeological Heritage and Ancestral Human Remains

I. SCOPE

The Kahnawà:ke Policy on Archaeological Heritage and Ancestral Remains (“Policy”) pertains to the treatment of archaeological heritage objects (“Archaeological Heritage”), including both pre-contact and post-contact human remains (“Ancestral Remains”), under the jurisdiction of the Kahnawà:ke (Mohawks of Kahnawà:ke). We developed this Policy to ensure that Ancestral Remains are handled in a culturally appropriate way and that Archaeological Heritage of cultural importance and significance is repatriated.

This Policy does not address all elements of Kahnawà:ke’s cultural heritage. Notably, this Policy does not address questions relating to language, intangible heritage, or non-archaeological sites of spiritual or cultural importance. These may be addressed through other policies. We reserve our rights and jurisdiction pertaining to all aspects of our cultural heritage, regardless of whether they are addressed by this Policy.

This Policy shall not be interpreted as limiting any rights or Crown obligations, including consultation and accommodation requirements.

The policies, protocols and procedures presented in this document are subject to periodic revision at the discretion of the MCK Archaeology Team, including whenever further information is provided from Knowledge Keepers.

II. SELECTED TERMS USED IN THIS POLICY

Kahnawà:ke:	The people of Kahnawà:ke
Kanien’kehá:ka:	People of the Flint, often referred to as Mohawk
Knowledge Keepers:	Knowledge Keepers are the men and women of the community who have the knowledge and experience to take care of the ancestral rituals of burials.
Mohawk Council of Kahnawà:ke (MCK):	The governing body of the Mohawks of Kahnawà:ke
MCK Archaeology Team:	The group of people within the MCK responsible for archaeological and heritage-related issues
Onkwehonwe People:	First People

III. THE MOHAWKS OF KAHNAWÀ:KE DECLARATION ON CULTURAL HERITAGE RIGHTS

This Policy is guided by the *Mohawks of Kahnawà:ke Declaration on Cultural Heritage Rights*:

We, the Mohawks of Kahnawà:ke hereby affirm our inherent and inalienable cultural heritage rights.

We also assert our cultural heritage rights as human rights, including those recognized by article 12 of the *United Nations Declaration on the Rights of Indigenous Peoples*¹ and by article 16(3) of the *American Declaration on the Rights of Indigenous Peoples*.²

In accordance with these rights, we have the right to maintain, control, protect, and develop our cultural heritage, including our archaeological heritage (artifacts, ancestral remains and funerary objects) and sites of cultural or spiritual importance, including burial grounds.

This includes:

- The right to develop our own laws, policies, protocols and practices pertaining to our cultural heritage;
- The obligation of outside governments and third parties to obtain our free, prior and informed consent (“FPIC”) prior to taking any action that could impact our cultural heritage, including conducting archaeological investigation of the archaeological sites or remains of our ancestors. This includes the possibility that certain projects cannot move forward if FPIC cannot be obtained;
- The right to determine who is qualified to carry out works that could impact our cultural heritage;
- The right to control how our cultural heritage is explored, treated, stored, curated and interpreted;
- The right to determine the value and importance of the cultural heritage that could be impacted by outside governments or third parties;
- The right to ensure that ancestral remains and burial sites are treated in accordance with our values and beliefs and not by processes determined by outside governments, third parties or professional orders; and

¹ Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

² Indigenous peoples have the right to preserve, protect, and access their sacred sites, including their burial grounds, to use and control their sacred objects and relics, and to recover their human remains.

- The right to obtain repatriation of cultural heritage property and Ancestral Remains currently held by third parties without our explicit consent.

The Two Row Wampum treaty relationship forms the basis of our relationship with outside governments with respect to the implementation of our cultural heritage rights. This means that outside governments and laws must not interfere with the exercise of our exclusive jurisdiction over our cultural heritage.

IV. OUR RIGHTS AND RESPONSIBILITIES

Within the Iroquois Confederacy, the Mohawks are the keepers of the Eastern Door. We are responsible for addressing the issues that arise from the east, from the Great Lakes to the mouth of the Kaniatarowanenne (St-Lawrence River). We have lived and travelled throughout Mohawk Traditional Territory, including along the Great River, since time immemorial. We have left indelible signs of our presence throughout time.

As Onkwehonwe People, we have an obligation to take care of everything that belongs to us throughout Mohawk Traditional Territory. This obligation includes Ancestral Remains and Archaeological Heritage. They form part of our cultural heritage, even if they are not uncovered in close proximity to Kahnawà:ke.

We assert jurisdiction over the transfer and repatriation of our Ancestral Remains, funerary objects and artifacts and require that our Ancestral Remains be handled in a manner consistent with our traditional values and beliefs. Our Ancestors must not be handled through processes determined by third-party governments or professional orders. Rituals pertaining to our culture must be carried out in order for our Ancestral Remains to restore the peace they rightfully deserve after having been disturbed or uncovered by an archaeological or development project.

Similarly, once Archaeological Heritage under our jurisdiction is uncovered, our rights and responsibility as Kahnawa'kehró:non are engaged, and we have the right to preserve and manage all findings. This includes the right to require repatriation of artifacts to Kahnawà:ke for permanent storage or display and to determine what constitutes appropriate immediate and long-term storage methods and facilities.

V. OUR JURISDICTION

We assert jurisdiction over all Archaeological Heritage or Ancestral Remains:

- identified as likely of Kanien'kehá:ka Onkwehonwe origin, regardless of when or where they are uncovered or taken;
- uncovered at sites:
 - within the traditional territory of the ancestors of the present-day Mohawks of Kahnawà:ke; or
 - where Kahnawà:ke is the closest Indigenous territory to the site.

We also assert jurisdiction over all Archaeological Heritage and Ancestral Remains in the possession of third parties – including any country, province, municipality, museum, cultural or

educational institution – that were uncovered or taken from sites:

- within the Traditional Territory of the Ancestors of the present-day Mohawks of Kahnawà:ke; or
- where Kahnawà:ke is the closest Indigenous Territory to the site.

VI. HERITAGE-RELATED AGREEMENTS

We recognize and accept the shared heritage interests of Kanien'kéha speaking territories. We endeavor to establish Heritage-Related Agreements, as needed, with such Kanien'kehá:ka communities and organizations, including Akwesasne and Kanesatake.

As needed, we may also develop Heritage-Related Agreements with other parties including archaeologists, proponents, non-Indigenous governments, institutions, resource management agencies and, in particular, the Quebec government.

Heritage-Related Agreements may be general in nature or specific to a single project or site.

VII. PROCESSES AND PROTOCOLS

A. PERMIT REVIEW AND ISSUANCE

1. All permit applications pertaining to works subject to our jurisdiction must be notified to the Mohawk Council of Kahnawà:ke (“MCK”).
2. The MCK may refuse to consent to the issuance of a permit for any archaeological project. The MCK Archaeology Team may issue such a refusal.
3. The notifying body or party must give the MCK adequate time to review the permit application.
4. The MCK Archaeology Team will review the permit application and may request additional information regarding the application or project from the notifying body or party.
5. The MCK Archaeology Team may also provide comments or establish requirements pertaining to, among others:
 - the scope and nature of the work;
 - proposed avoidance and mitigation measures;
 - proposed work methods;
 - participation of the MCK Archaeology Team and/or Kahnawa'kehró:non in the works;
 - the qualifications required of anyone else participating in the project;
 - the project timeline;
 - management plans for artefacts and Ancestral Remains; and
 - reporting.

6. The notifying body or party must ensure that these requirements are reflected either:
 - in the conditions associated with any permit related to the project; or
 - within the context of a specific Heritage-Related Agreement between the relevant parties.
7. If the requirements set out by the MCK Archaeology Team are not incorporated in a permit or Heritage-Related Agreement, any permits issued or work conducted relating to the project will be deemed to have been issued without the MCK's free, prior and informed consent.

B. PROTOCOL FOR ARCHAEOLOGICAL HERITAGE FINDINGS

1. The MCK Archaeology Team may, at its discretion, require repatriation of all objects subject to our jurisdiction that can be removed without being damaged from pre-contact and post-contact sites.
2. At pre-contact sites, such items include, but are not limited to:
 - knives, arrowheads and personal gear;
 - shards, storage/cooking pottery, pipes, and other ceramics;
 - organic material;
 - ocher, shells and beads;
 - animal claws, hoofs and teeth;
 - lithic material such as scrapers, axes, adzes, millstones, etc.;
 - bone artifacts; and
 - antler pokers, scrapers, needles and other bone art pieces.
3. In the case of post-contact sites, we add to the previous list:
 - tin cans;
 - glass bottles, glass beads, and jars;
 - European-made metal goods; and
 - international ceramics.
4. If Archaeological Heritage is uncovered during the dig, the archaeologist must immediately inform the MCK and provide a preliminary description of what has been found. This requirement applies regardless of whether the Archaeological Heritage has been found pursuant to research or construction work or by fortuitous discovery.
5. The archaeologist must work with the MCK Archaeology Team to reach a Heritage-Related Agreement regarding the management and repatriation of the Archaeological Heritage.

C. PROTOCOL FOR THE PROTECTION AND MANAGEMENT OF SITES AND PERMANENT FIXTURES

Where a site within our jurisdiction is itself a place of Archaeological Heritage or includes permanent fixtures that cannot be physically removed without significant effort or without destroying the object (e.g., hearths, burial mounds, foundations, rock walls, palisades, etc.), the MCK Archaeology Team will require a Heritage-Related Agreement to address the protection and management of the site.

D. PROTOCOL FOR BURIAL GROUNDS

1. The MCK Archaeology Team shall determine whether a site within our jurisdiction is a burial ground (cemetery).
2. If a site is suspected to be a burial ground, the works must be suspended immediately and the archaeologist must immediately notify the MCK. This requirement applies regardless of whether the site has been found pursuant to research or construction work or by fortuitous discovery.
3. The site must immediately be protected from disturbance.
4. Any further investigation of the site may only be conducted with the participation of the MCK Archaeology Team.
5. If the site is determined to be a burial ground, the archaeologist and any other necessary parties must meet with the MCK Archaeology Team to discuss how to preserve and protect the site from future disturbance.

E. PROTOCOL FOR UNCOVERED ANCESTRAL REMAINS

1. If Ancestral Remains are uncovered within our jurisdiction, the archaeologist must immediately suspend all works and take all necessary measures to protect the remains from any damage, including from exposure.
2. The archaeologist must notify the MCK of the find immediately, regardless of whether the Ancestral Remains have been found pursuant to research or construction work or by fortuitous discovery.
3. A meeting between, the archaeologist, the Ministère de la Culture et des Communications and the MCK will then be required.
4. Once the MCK Archaeology Team has determined that it has sufficient information regarding the site, it will review the case, including the nature of the project and remains, to determine which protocol to follow regarding the treatment of the Ancestral Remains.

5. The MCK Archaeology Team may require Ancestral Remains to be treated according to any one of the following protocols, in descending order of priority:
 - *in situ* reburial;
 - excavation and reburial in proximity to the original burial location; or
 - excavation and repatriation to Kahnawà:ke.
6. The MCK Archaeology Team may consult traditional Knowledge Keepers when choosing a protocol for the treatment of the Ancestral Remains.
7. Once the MCK Archaeology Team has chosen a protocol for treatment of the Ancestral Remains, it will make the arrangements required with the Knowledge Keepers to implement the selected protocol.
8. The MCK Archaeology Team's choice of protocol for the treatment of Ancestral Remains must be respected by the proponent and any outside jurisdictions. Where necessary, the project must be modified to accommodate an *in situ* burial or reburial in proximity to the burial site.
9. Photographs of Ancestral Remains may only be published or otherwise publicly displayed with the written consent of the MCK Archaeology Team. The MCK Archaeology Team understands the importance of photographs as part of scientific inquiry and as educational tools. However, in order to avoid unnecessary disturbance of our Ancestors, we require that any publication or display of photos be kept to a strict minimum. Wherever possible, photos should be replaced by drawings or blurred to reveal only the relevant aspects of the image.
10. The MCK Archaeology Team may sign Heritage-Related Agreements with any party to ensure the proper implementation of a protocol pertaining to the treatment of Ancestral Remains.

F. PROTOCOLS FOR THE TREATMENT OF ANCESTRAL REMAINS

The following protocols shall be respected in accordance with the MCK Archaeology Team's determination regarding uncovered or disturbed Ancestral Remains.

In Situ Reburial

Wherever possible, the MCK Archaeology Team will require that uncovered remains be buried *in situ*. In such cases:

1. The Ancestral Remains must be immediately buried at the location in which they were uncovered.
2. No further excavation is required.
3. No analysis will be required, but the MCK Archaeology Team may permit analysis of the

remains for community research purposes, following the analysis protocol.

4. The Knowledge Keepers will then take on their role in the process and complete any necessary rituals or prescribed ceremonies to lay the Ancestral Remains to rest.

Excavation and reburial in proximity to burial location

If the MCK Archaeology Team determines that the Ancestral Remains cannot remain in the location where they are uncovered, the Ancestral Remains must be reburied in close proximity to the original burial location. This new location will be identified by the MCK Archaeology Team, which must be satisfied that the Ancestral Remains will be protected from any future disturbance. In such cases:

1. If excavation is required, an MCK Technician must be part of the process.
2. No analysis will be required, but the MCK Archaeology Team may permit analysis of the remains for research purposes, following the analysis protocol.
3. The Knowledge Keepers will then take on their role in the process and complete any necessary rituals or prescribed ceremonies to lay the Ancestral Remains to rest.

Excavation and reburial in Kahnawà:ke

If the MCK Archaeology Team determines that the Ancestral Remains cannot remain in the location where they are uncovered and cannot be sufficiently protected from future disturbance and reburied in close proximity to the original burial location, the Ancestral Remains shall be reinterred in Kahnawà:ke. In such cases:

1. If excavation is required, an MCK Technician must be part of the process.
2. No analysis will be required, but the MCK Archaeology Team may permit analysis of the remains for research purposes, following the analysis protocol.
3. The Knowledge Keepers will then take on their role in the process and complete any necessary rituals or prescribed ceremonies to lay the Ancestral Remains to rest.

G. PROTOCOL FOR THE ANALYSIS OF ANCESTRAL REMAINS

The Knowledge Keepers in Kahnawà:ke are supportive of analysis under certain circumstances. Acceptable analyses may include sampling for radiocarbon dating, dietary analysis, isotope analysis and DNA analysis. However, the MCK Archaeology Team must be consulted prior to any decision to perform any such analyses and no analysis of Ancestral Remains may be undertaken without the free, prior and informed consent of the MCK Archaeology Team. This consent must be obtained in writing on a case-by-case basis. The MCK Archaeology Team will generally refuse to consent to analysis of the remains of children. A Heritage-Related Agreement regarding the management of data must be completed prior to any analysis of Ancestral Remains.

Any analysis must respect Onkwehonwe cultural rituals. Archaeologists and bio-archaeologists must adhere to the culturally sensitive return of all Ancestral Remains, including dust from drilling. For personal safety, bio-archeologists must handle the Ancestral Remains with gloves.

The MCK Archaeology Team understands that every laboratory has procedures based on professional standards. We also understand that there are minimally invasive procedures that include analyses under a microscope, CT and 3D scans, and DNA analyses, all of which can be useful in obtaining information that can be preserved for later analysis. The MCK Archaeology Team also understands that some laboratories ensure that all that is left following analysis, including dust, will be returned.

H. PROTOCOL FOR ANCESTRAL REMAINS IN STORAGE

1. All Ancestral Remains that are in the possession of third parties – including any country, province, municipality, museum, cultural or educational institution – must be repatriated to Kahnawà:ke. Kahnawà:ke has a designated place in the community for repatriation of Ancestral Remains.
2. The MCK Archaeology Team may enter into Heritage-Related Agreements concerning repatriation of Ancestral Remains.
3. The MCK Archaeology Team will contact the Knowledge Keepers to take on their role in this process. The Knowledge Keepers will be responsible for taking possession of the Ancestral Remains and carrying out the proper rituals to return the Ancestral Remains to Kahnawà:ke for reburial. Once the Ancestral Remains have returned to Kahnawà:ke, the Knowledge Keepers shall complete any necessary rituals or prescribed ceremonies to lay the Ancestral Remains to rests.