KAHNAWÀ:KE COMMUNAL ARBITRATION PROCEDURE

Enacted by MCR #113/1989-90 on 5 Enníska/February, 1990
Amended by MCED #39/2023-2024 on 14 Seskéha/August, 2023
Amended by MCED #45/2026-2027 on 13 Kenténha/October, 2026

1.0 GENERAL

1.1 Arbitration proceedings are voluntary and both parties who wish to submit to this procedure must complete the "Agreement to Submit to Arbitration" form. A copy of this form is attached as Schedule A to this procedure. Once completed, it must be filed at the offices of Justice Services.

Once both parties have voluntarily submitted their dispute for arbitration, they are deemed to have immediately renounced all civil recourses to the Court of Kahnawà:ke (Court) and to any other civil jurisdiction for the issues on which they have agreed to submit to this procedure even though a court would have jurisdiction to decide the subject matter of the dispute.

Once both parties have voluntarily submitted their dispute to arbitration, they are deemed to have submitted to voluntary execution of the decision of the arbitrator.

1.2 Labor disputes will be arbitrated in accordance with the special procedure set forth in the Kahnawà:ke Communal Arbitration Procedure - Labor Division.

A labor dispute is any dispute that arises between an employee and an employer under the Fair Wage Agreement, including, but not limited to a disagreement over wages, hours, working conditions, discipline, unfair dismissal, inequitable treatment, or harassment.

Mohawk Self Insurance decisions may be reviewed by the Administrative Tribunal.

1.3 Each party to the arbitration proceedings is financially responsible for the presentation of its own witnesses and for making sure that their witnesses attend the arbitration proceedings.

Each party may subpoena their own witnesses through the Clerk or a Justice. However, the requesting party will be responsible for the service of the subpoena, including any bailiff fees.

1.4 The parties can settle the dispute on their own. After the arbitrator has been notified of such a settlement, the arbitration proceedings will be terminated.

1.5 An arbitration award decided by the arbitrator becomes executory when homologated by the Court. Such homologation of the award constitutes a judgment of the Court.

Any party to the arbitration proceeding(s) may submit a motion to the Court to homologate the arbitration award.

1.6 All the provisions concerning arbitration proceedings apply to arbitration where the parties have no stipulations to the contrary, and where the parties voluntarily submit their respective dispute to these proceedings. However, the parties cannot agree to depart from provisions of this procedure that determine the jurisdiction of a court or from those relating to the application of the adversarial principle or the principle of proportionality, to the right to receive notification of a document or to the homologation or the annulment of an arbitration award.

1.7 The Court cannot intervene in any question governed by these proceedings, except in the cases provided herein.

1.8 The Court may, on an application, grant provisional measures or safeguard orders before or during arbitration proceedings.

1.9 For the purpose of this procedure the term “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.

2.0 ASSIGNMENT OF ARBITRATOR

2.1 Decision-makers appointed to the Administrative Tribunal are authorized to act as arbitrators under this procedure and will be assigned according to availability and expertise.

3.0 CONFLICT OF INTEREST OF ARBITRATOR

3.1 The arbitrator will be disqualified to act if they are in a conflict of interest. They are in a conflict of interest where a secondary interest compromises their primary interest to render an impartial and independent decision.

3.2 Secondary interest includes:

3.2.1 Financial interest that an arbitrator has in a business that provides services to, or contracts with, an individual who is a party or witness to an arbitration proceeding;

3.2.2 Any gift, gratuity, favor or compensation of any nature whatsoever an arbitrator may receive in the performance of their duties that is not remuneration in accordance with their professional services agreement;

3.2.3 The advancement of personal and/or political agendas through a decision;

3.2.4 Being related to an individual appearing before the arbitrator. For the purposes of this procedure being related to an individual includes:

3.2.4.1 Relations by blood or adoption, including: parent, child, sibling, aunt, uncle, first cousin, nephew or niece;

3.2.1.2 Relations by marriage, including: a current or former spouse, brother-in-law, sister-in-law, father-in-law, mother-in-law, son-in-law, daughter-in-law, step-parent, step-child; or

3.2.1.3 Relations through another relationship, including: a close friendship, a current or former relationship, occurring outside the work setting that would make it difficult for the arbitrator to be objective, or that would create the appearance that they could not be objective.

Examples include, but are not limited to, amorous or intimate personal relationships, significant business relationships and/or affiliates with other organizations; and

3.2.5 A significant professional relationship with a party in the 12 months preceding the commencement of an arbitration proceeding before the arbitrator. Examples of significant professional relationships include:

3.2.5.1 Employee/employer;

3.2.5.2 Solicitor/client; or

3.2.5.3 Partnership/association.

Notwithstanding the above, in some circumstances it may never be appropriate for an arbitrator to arbitrate a dispute involving the party. When evaluating whether the arbitrator's participation in the proceeding would give rise to a reasonable apprehension of bias, the position of all parties, although not determinative, and the circumstances of the relationship should be carefully considered.

4.0 RECUSATION OF ARBITRATOR

4.1 The recusation rules found at articles 46.1 to 51.2 of the *Regulation Respecting the Rules of the Administrative Tribunal* apply to the arbitrator, adapted as required.

5.0 JURISDICTION OF ARBITRATOR

5.1 The arbitrator will decide the matter of their own jurisdiction.

5.2 If the arbitrator declares themselves competent during arbitration proceedings, the parties thereby renounce their respective recourses to the Court or to any other court jurisdiction, if the parties have voluntarily submitted themselves to these arbitration proceedings.

6.0 INITIATING ARBITRATION PROCEEDINGS

6.1 A party intending to submit a dispute to arbitration must notify the other party in writing of their intention, specifying the matter in dispute.

6.2 Both parties must voluntarily submit the "Agreement to Submit to Arbitration" form at the offices of Justice Services by one of the following methods:

6.2.1 In-person;

6.2.2 Bailiff;

6.2.3 Registered mail; or,

6.2.4 Any other means that reasonably ensures proof of reception.

7.0 SKÉN:NEN AONSÓN:TON

7.1 The Clerk will refer the matter to Skén:nen Aonsón:ton (SA) for mandatory review and assessment. SA will determine whether the matter is appropriate for an alternative dispute resolution conference. If agreed upon, the parties will be given the opportunity to resolve the issue at an alternative dispute resolution conference.

7.2 If a resolution cannot be reached or it is determined that the dispute is not appropriate for an alternative dispute resolution conference, the matter will be referred to the arbitrator for adjudication and decision.

7.3 SA will notify the Clerk if both parties to a dispute agree to commence alternative dispute resolution within three (3) days of their signature of the agreement to commence such proceedings.

7.4 SA will also notify the Clerk once the dispute has been resolved. If, after sixty (60) days, the parties have not resolved the dispute, SA will notify the Clerk that the issue cannot be resolved through an alternative dispute resolution conference. The matter will then be referred to the arbitrator for adjudication and decision.

7.5 Either party may choose to refer the dispute to SA at any time up to notification of the arbitration decision. If arbitration has commenced between the parties, the Clerk will notify the arbitrator of all notices they have received from SA.

7.6 If the arbitrator receives notice from the Clerk that the parties have commenced alternative dispute resolution conferences at SA, they will suspend arbitration proceedings until notice of resolution or for sixty (60) days, whichever happens first.

8.0 ORDER OF ARBITRATION PROCEEDINGS

8.1 The arbitrator will proceed to the arbitration according to the procedure they determine. They have all the necessary powers for the exercise of their jurisdiction, including the power to appoint an expert.

The proceedings and the presentation of evidence at all stages must be proportionate to the nature and complexity of the matter at dispute.

8.2 The arbitrator may require each of the parties to produce a statement of their claim(s) with supporting documents within an allotted time.

Each of the parties will transmit a copy of the statement(s) and document(s) to the opposite party within the same time.

Every expert's report or other document(s) which the arbitrator may invoke in support of their decision must be transmitted to the parties.

8.3 Proceedings are oral. A party may nevertheless produce a written statement.

8.4 The arbitrator must give notice to the parties of the date of the hearing and, where such is the case, the date on which they will inspect or visit the property.

8.5 The arbitrator will record the default and may continue the arbitration proceedings if one of the parties fails to:

8.5.1 State their claim(s);

8.5.2 Appear at the hearing; or,

8.5.3 Produce the evidence in support of their claim(s).

8.6 If the party that submitted the dispute to arbitration fails to state their claim(s), the arbitrator will terminate the proceedings, unless the other party objects.

8.7 A witness may be summoned to declare what they know, to produce documentation, or to do both.

The subpoena must be served on the witness at least ten (10) days prior to the date of appearance. However, in the interest of justice, the arbitrator may reduce the ten (10) day service period. That decision must be specified in the subpoena.

8.8 The arbitrator has the power to administer oaths and receive solemn affirmations.

8.9 A witness cannot be compelled to divulge any communication made to them by their consort during marriage.

8.10 Witnesses cannot refuse to answer a question on the grounds that the answer may tend to incriminate them or expose them to a judicial proceeding of any kind; their answers cannot be used against them, except if they are prosecuted for perjury or for the giving of contradictory testimony.

8.11 If the examination of a witness cannot be completed on the day they appear, they are bound to attend on the next following juridical day, or on such other day as is indicated to them by the arbitrator and entered in the minutes of the arbitration proceedings.

8.12 The arbitrator will settle the dispute according to the rules of law which they consider appropriate and, where applicable, determine the amount of damages.

8.13 The arbitrator cannot act as amiable compositor except with the prior agreement of the parties.

8.14 The arbitrator will render a decision according to the stipulations of the contract and according to the customs and usages applicable in that field.

9.0 ARBITRATION AWARD

9.1 The arbitrator is bound to keep the advisement secret. They may nevertheless, in the award, state their conclusions and their reasoning.

9.2 If the parties settle the dispute, the arbitrator will record the agreement in the arbitration award.

9.3 The arbitration award must be made within ninety (90) days of the day of the last sitting. It must state the reasons for the decision and be signed by the arbitrator. No extension will be permitted.

9.4 The arbitration award must indicate the date and place at which it was made.

The arbitration award is deemed to have been made at the indicated date and place.

9.5 The arbitration award binds the parties upon being made. A copy signed by the arbitrator must be transmitted to each of the parties immediately.

9.6 Upon the application of a party made within thirty (30) days after receiving the arbitration award, the arbitrator may:

9.6.1 Correct any error in writing, calculation or other clerical error in the award; or,

9.6.2 Interpret a specific part of the award, with the prior agreement of the parties; or,

9.6.3 Render a supplementary award on a part of the application in the award.

9.7 The interpretation forms an integral part of the award.

9.8 Any decision of the arbitrator correcting, interpreting or supplementing the arbitration award pursuant to an application contemplated in section 9.6 of this procedure must be rendered within thirty (30) days of reception of the application.

9.9 Sections 9.1 through 9.5 of this procedure apply to the decision.

9.10 If the arbitrator does not render their decision before the expiry of ninety (90) days from the date of termination of the proceeding, a party may apply to a Justice to issue an order for the protection of the rights of the parties.

9.11 The decision of the Justice pursuant to section 9.9 of this procedure is final and without appeal.

10.0 HOMOLOGATION OF THE ARBITRATION AWARD

10.1 An arbitration award can be put into compulsory execution upon being homologated by the Court.

10.2 A party may, by motion, apply to the Court for the homologation of the arbitration award.

10.3 The Court examining a motion for homologation cannot inquire into the merits of the dispute.

10.4 The Court may postpone its decision of homologation if an application has been made to the arbitrator by virtue of section 9.6 of this procedure.

10.5 If the Court postpones its decision, it may, on the application of the party applying for homologation, order the other party to provide security.

10.6 The Court cannot refuse homologation of an arbitration award except on the proof that:

10.6.1 One of the parties did not have the capacity to voluntarily submit to arbitration;

10.6.2 The agreement to submit to arbitration is invalid under the laws applicable to the Mohawk Territory of Kahnawà:ke;

10.6.3 The party against which the arbitration award is invoked was not given proper notice of the arbitration proceedings, or it was for another reason impossible for that party to present its case; or

10.6.4 The arbitration award pertains to a dispute not referred to or covered by the arbitration agreement or contains a conclusion on matters beyond the scope of the agreement, in which case only the irregular provision is not homologated if it can be dissociated from the rest of the arbitration award.

10.7 The Court cannot refuse homologation of an arbitration award of its own motion unless the award is contrary to public order.

10.8 The arbitration award as homologated by the Court is executory as a judgment of the Court.

11.0 ANNULMENT OF THE ARBITRATION AWARD

11.1 The only recourse against an arbitration award is an application for its annulment.

11.2 Annulment is obtained by a motion to the Court to annul the homologation order prior to the execution of the homologation order.

11.3 Sections 10.3 through 10.6 of this procedure, adapted as required, apply to an application for annulment of an arbitration award.

11.4 On the application of one party, the Court may, if it considers it expedient, suspend the application for annulment for any such time as it deems necessary to allow the arbitrator to take whatever measure(s) are necessary to remove the grounds for annulment, even if the time of thirty (30) days has expired.

12.0 RETRIEVAL

12.1 The parties must retrieve their exhibits and other documents within one (1) year from the date of the arbitration award.

12.2 After the one (1) year has elapsed, unclaimed exhibits and other documents will be destroyed.

SCHEDULE A

AGREEMENT TO SUBMIT TO ARBITRATION

(Section 1.1 of the Kahnawà:ke Communal Arbitration Procedure)

PLEASE PRINT IN BLUE OR BLACK INK.

1. NAME OF PARTY #1 AND CONTACT INFORMATION	
Name:	
Address:	
Telephone:	
Fax Number:	
Email:	

2. NAME OF PARTY #2 AND CONTACT INFORMATION	
Name:	
Address:	
Telephone:	
Fax Number:	
Email:	

3. MATTER TO BE ARBITRATED

It is the intention of the parties to submit the following matter to arbitration:

(Specify the matter to be arbitrated. If additional space is needed, please attach pages as necessary.)

We agree to submit the above-mentioned matter to arbitration pursuant to the *Kahnawà:ke Communal Arbitration Procedure*. We hereby immediately renounce all civil recourses to the Court of Kahnawà:ke and to any other civil jurisdiction.

We further agree to voluntarily submit to any and all executions in relation to the arbitration award by the arbitrator. It is understood that our dispute will first be referred to Skén:nen Aonsón:ton for mandatory review and assessment to determine whether the matter is appropriate for alternative dispute resolution.

_____	_____	_____
Name of Party #1	Signature	Date

_____
Witness

_____	_____	_____
Name of Party #2	Signature	Date

_____
Witness