

# **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

## **OVERVIEW OF THE KAHNAWÀ:KE COMMUNAL ARBITRATION PROCEDURE**

1. The Arbitration proceedings are absolutely voluntary and both parties who wish to submit to this procedure must fill in a form called “The Agreement to Submit to Arbitration”, as well as another form called “Notice of Intent to Submit to Arbitration”.

Once both parties have submitted their dispute to arbitration, they immediately renounce all civil recourses to the Court of Kahnawà:ke and to other civil jurisdiction.

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.

Labor disputes will also include appeals of decisions made and reviewed by Mohawk Self-Insurance.

3. Each party has the right to choose one Arbitrator and each of the two Arbitrators thereby chosen shall together appoint a third arbitrator, and all three constitute the Arbitration Board which shall decide the dispute between the parties.
4. 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 of the parties may subpoena their own witnesses by the Clerk or one of the Justices of the Peace of Kahnawà:ke.

5. Both parties can on their own settle the dispute which is before the Arbitration Board and after the Board has been notified of such a settlement the proceedings before the Board are thereby terminated.
6. An Arbitration Award decided by the Board becomes executory when recognized by the Court of Kahnawà:ke, and after such recognition the Award constitutes a judgement of the Court of Kahnawà:ke.

Any party to the Arbitration Proceedings may by motion apply to the Court of Kahnawà:ke for the recognition of the Arbitration Award.

### **1. GENERAL PROVISIONS**

- 1.1 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 cases to these proceedings.

- 1.2 Where a civil action is brought regarding a dispute in a manner on which the parties have an arbitration agreement, the arbitration proceedings may nevertheless be commenced or pursued and an award made at any time, while the case is pending before the court, on the application of both parties to the arbitration agreement.
- 1.3 A judge of or the Court of Kahnawà:ke cannot intervene in any question governed by these proceedings, except in the cases provided herein.
- 1.4 A judge or the Court of Kahnawà:ke may grant provisional measures before or during arbitration proceedings on the motion of one of the parties.
- 1.5 The service of documents shall be made by the Peacekeepers of Kahnawà:ke.
- 1.6 The appointment of arbitrators is voluntary and without compensation.

## **2. APPOINTMENT OF ARBITRATORS**

- 2.1 There shall be three (3) arbitrators. Each party shall appoint one (1) arbitrator and the two shall appoint the third.
- 2.2 If one of the parties fails to appoint an arbitrator within thirty (30) days after having been notified by the other party to do so, or if the arbitrators fail to concur on the choice of the third arbitrator within thirty days after their appointment, a judge of the Court of Kahnawà:ke shall make an appointment on the motion of one of the parties.
- 2.3 The decision of the judge under section 2.2 of this procedure is final and without appeal.

## **3. INCIDENTAL CESSATION OF ARBITRATOR'S APPOINTMENT**

- 3.1 An arbitrator may be refused:
  1. If he is related or allied to one of the parties within the degree of cousin-germane inclusively;
  2. If he himself is a party to an action involving a question similar to the one in the dispute;
  3. If he has given advice on the matter in dispute, or if he has made known his opinion outside the arbitration proceedings;
  4. If he is directly interested in favoring any of the parties;
  5. If he does not have the qualifications agreed to by the parties.
- 3.2 An arbitrator must declare to the parties any ground of recusation to which he is liable.
- 3.3 The party having appointed an arbitrator may propose his recusation only on a ground of recusation which has arisen or been discovered since the appointment.
- 3.4 The party proposing recusation shall make a written statement of his reasons to the arbitrators within fifteen days after becoming aware of the appointment of all the arbitrators or of a ground of recusation.

If the arbitrator whose recusation is proposed does not withdraw or the other party does not accept the recusation, the other arbitrators shall come to a decision on the matter.
- 3.5 If the recusation cannot be obtained under section 3.4 of this procedure, a party may within days of being so advised, apply to a judge of the Court of Kahnawà:ke to decide the matter.

The arbitrators, including the arbitrator whose recusation is proposed, may continue the arbitration proceedings and make their award while such a case is pending.

- 3.6 If an arbitrator is unable to perform his duties or fails to perform them in a reasonable time, a party may apply to a judge of the Court of Kahnawà:ke to have his appointment revoked.
- 3.7 If the procedure of recusation or revocation of appointment of an arbitrator contained in the arbitration agreement proves difficult to put into practice, a judge of the Court of Kahnawà:ke may on the motion of one of the parties decide the matter of the recusation or revocation of appointment.
- 3.8 The judge's decision on the matter of recusation or revocation of appointment is final and without appeal.
- 3.9 The prescribed procedure for the appointment of an arbitrator applies for his replacement.

#### **4. COMPETENCE OF ARBITRATORS**

- 4.1 The arbitrators may decide the matter of their own competence.
- 4.2 If the arbitrators declare themselves competent during arbitration proceedings, the parties thereby renounce their respective recourses to the Court of Kahnawà:ke or to any other Court jurisdiction, if the parties have voluntarily submitted themselves to these arbitration proceedings.

#### **5. ORDER OF ARBITRATION PROCEEDINGS**

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

Both parties must voluntarily submit the dispute to arbitration in writing.

The forms of "notice of intention" and the "agreement to submit to arbitration" must be submitted to the arbitration director or officer responsible for implementing the arbitration proceedings.

Once both parties have voluntarily submitted their dispute to arbitration, they are deemed to have renounced all civil Recourses to the Court of Kahnawà:ke and to any other Civil jurisdiction.

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

- 5.2 The arbitrators shall 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.
- 5.3 The arbitrators may require each of the parties to produce a statement of his claims with the supporting documents within an allotted time.

Each of the parties shall transmit a copy of the statement and documents to the opposite party within the same time.

Every expert's report or other documents which the arbitrators may invoke in support of their decision must be transmitted to the parties.

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

5.5 The arbitrators 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 the property or visit the place.

5.6 The arbitrators shall record the default, and may continue the arbitration proceedings if one of the parties fails to state his claims, to appear at the hearing or to produce the evidence in support of his claims.

If the party having submitted the dispute to arbitration fails to state his claims the arbitrators shall terminate the proceedings, unless one of the other parties objects.

However, in cases of urgency a judge of the Court of Kahnawà:ke may by special order entered on the writ of subpoena, reduce the delay for service, but it cannot be made less than twenty-four hours before the time fixed for appearance.

5.7 A witness may be summoned to declare what he knows, to produce some document, or to do both.

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

5.8 The arbitrators have the power to administer oaths and receive solemn affirmations.

5.9 A witness cannot be compelled to divulge any communication made to him by his or her consort during the marriage.

5.10 A witness cannot refuse to answer for reason that his reply might tend to incriminate him or to expose him to a legal proceeding of any kind; but he may object on that ground and ask for the application of section 13 of the Canadian Charter of Rights and Freedoms of the Constitution Act of 1982.

5.11 If the examination of a witness cannot be completed on the day he appears, he is bound to attend on the next following juridical day, or on such other day as is indicated to him by the arbitrators and entered in the minutes of the arbitration proceedings.

5.12 The arbitrators shall settle the dispute according to the rules of Law which they consider appropriate and, where applicable, determine the amount of the damages.

They cannot act as amiable compositors except with the prior concurrence of the parties.

They shall in all cases decide according to the stipulations of the contract and according to the customs and usage's applicable in that field.

5.13 Every major decision of the arbitrators shall be rendered by a majority of voices, in writing.

One arbitrator with authorization of the parties or all the other arbitrators may decide questions of the procedure.

Written decisions must be signed by all the arbitrators; if one of them refuses to sign or cannot sign, the others must record the fact and the decision has the same effect as if it were signed by all of them.

## **6. ARBITRATION AWARD**

- 6.1 The arbitrators are bound to keep the advisement secret. Each of them may nevertheless, in the award, state his/her conclusions and the reasons on which they are based.
- 6.2 If the parties settle the dispute, the arbitrators shall record the agreement in an arbitration award.
- 6.3 The arbitration award must be made within thirty (30) days from the day of the last sitting, by a majority of voices. It must state the reasons on which it is based and be signed by all the arbitrators. If one of them refuses to sign or is unable to sign, the others must record that fact and the award has the same effect as if it were signed by all of them.
- 6.4 The arbitration award must contain an indication of the date and place at which it was made.
- The award is deemed to have been made at the indicated date and place.
- 6.5 The arbitration award binds the parties upon being made. A copy signed by the arbitrators must be remitted to each of the parties immediately.
- 6.6 The arbitrators may, on the application of a party made within thirty days after receiving the arbitration award:
1. Correct any error in writing or calculation or any other clerical error in the award;
  2. Interpret a specific part of the award, with the prior agreement of the parties;
  3. Render a supplementary award on a part of the application in the award;
- 6.7 The interpretation forms an integral part of the award.
- 6.8 Any decision of the arbitrators correcting, interpreting or supplementing the award pursuant to an application contemplated in section 6.7 of this procedure must be rendered within thirty (30) days after the application.
- 6.9 Sections 6.1 and 6.5 of this procedure apply to the decision.
- 6.10 If the arbitrators do not render their decision before the expiry of thirty (30) days from the date of termination of the proceeding, a party may apply to a judge of the Court of Kahnawà:ke to make any order for the protection of the rights of the parties.
- 6.11 The decision of the judge pursuant to section 6.10 of this procedure is final and without appeal.

## **7. RECOGNITION OF THE ARBITRATION AWARD**

- 7.1 An arbitration award can be put into compulsory execution upon being recognized by the Court of Kahnawà:ke.
- 7.2 A party may, by motion, apply to the Court of Kahnawà:ke for the recognition of the arbitration award.
- 7.3 The Court examining a motion for recognition cannot inquire into the merits of the dispute.
- 7.4 The Court may postpone its decision of recognition if an application has been made to the arbitrators by virtue of section 6.6 of this procedure.

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

- 7.5 The Court cannot refuse recognition of an arbitration award except on the proof that:
1. One of the parties was not qualified to submit to the arbitration proceedings or to enter into the arbitration agreement;
  2. The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings;
  3. The mode of appointment of arbitrators or the applicable arbitration procedure was not observed.
- 7.6 The Court cannot refuse recognition of an arbitration award of its own motion unless the award is contrary to public order.
- 7.7 The arbitration award as recognized by the Court is executory as a judgement of the Court of Kahnawà:ke.

## **8. ANNULMENT OF THE ARBITRATION AWARD**

- 8.1 The only possible recourse against an arbitration award is an application for its annulment.
- 8.2 Annulment is obtained by a motion to Court of Kahnawà:ke to annul the recognition order prior to execution of the recognition order.
- 8.3 Sections 7.3 to 7.6 of this procedure, adapted as required, apply to an application for annulment of an arbitration award.
- 8.4 On the application of one party, the Court if it considers it expedient, may suspend the application for annulment for such time as it deems necessary to allow the arbitrators to take whatever measures are necessary to remove the grounds for annulment, even if the time of thirty days has expired.

***Court of Kahnawake***  
***Teieia'torehtákhwa Ne Kahnawá:ke***  
***P.O. Box 1239***  
***Kahnawá:ke Mohawk Territory, J0L 1B0***

**NOTICE OF INTENTION TO SUBMIT TO ARBITRATION PROCEEDINGS**

Date: \_\_\_\_\_

To: \_\_\_\_\_  
Name & Address

From: \_\_\_\_\_  
Name & Address

Please be advised that it is our intention to submit to arbitration the following manner:  
(Description of matter to be arbitrated e.g. teacher's contract claim for services rendered).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AGREEMENT TO SUBMIT TO ARBITRATION**

We agree to submit to the above mentioned matter to arbitration, and we the undersigned hereby voluntarily renounce all civil recourses to the Court of Kahnawá:ke and to any other civil jurisdiction.

We the undersigned also agree to voluntarily submit to any and all executions in relation to the decision of the arbitrators.

PLACE: \_\_\_\_\_ PLACE: \_\_\_\_\_

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_  
(Party to arbitration) (Party to arbitration)

Justice-Court-0001  
Issued by: Justice Services

Issue date: Nov. 24, 2008  
Rev 0