

# THE KAHNAWÀ:KE JUSTICE SYSTEM: PAST, PRESENT AND FUTURE

---

Presented by Kevin Fleischer

Commissioner of Justice

Mohawk Council of Kahnawà:ke

Member of the Barreau du  
Quebec

November 21, 2023

## 1. Section 107 of Indian Act

- S. 107 of *Indian Act* authorizes appointment of persons to be Justices of the Peace (“JP”).
- JPs can hear by-laws made under s.81 of *Indian Act* and offenses under the *Criminal Code* relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offense is committed by an Indian or relates to the person or property of an Indian.

## 2. Brief History of JPs in Kahnawà:ke

- Indian Agents used to be automatically appointed as JP under s.107.
- First Mohawk JP in 1974 (from Akwesasne). Informal court from 1974-1977.
- Sanction of court by resolution in April 1977 which recognized the JP to perform duties and hear cases as a JP for Kahnawà:ke.
- Kahnawà:ke Mohawk JPs first appointed in 1985. Last two appointed in 1993.

## 2. Brief History of JPs in Kahnawà:ke (cont'd)

- Kahnawà:ke determined it could establish its own local court, resulting in creation of Court of Kahnawà:ke.
- In 1979, Kahnawà:ke began expanding activities to hear matters other than traffic offenses, including gradually hearing aspects of Part XXVII of *Criminal Code*.

## 2. Brief History of JPs in Kahnawà:ke (cont'd)

- Extract from *MCK Justice System Report* (date unknown):  
*“Court of Kahnawà:ke derives its jurisdiction from the will of the Mohawk People in exercise of the inherent right to self-determination. Consequently, the Court of Kahnawà:ke is responsible only to Mohawks of Kahnawà:ke.”*

### 3. Administration

- Court administered by MCK Justice Services.
  - Responsible for development, delivery and management of Kahnawà:ke Justice System.
- “Justice Department” for Kahnawà:ke.
- Administers justice system under oversight of Kahnawà:ke Justice Commission.

## 4. Cases

- Court currently hears:
  - Summary conviction offences (Part XXVII of *Criminal Code*).
  - Contested traffic tickets; and
  - Many Kahnawà:ke laws (e.g. *MCK Election Law*, *Sanitary Conditions Law*).

## 5. Common charges

- Common charges include:
  - Assault
  - Mischief
  - Theft
  - Break & Entry
  - Assault with a weapon
  - Breach of Probation
  - Breach of Peacebond
  - Assault on a Peacekeeper
  - Obstruction
  - Uttering Threats
  - Fraud
  - Resisting arrest



## 6. Operations

- Prosecutor and JPs appear on sessional basis.
- Criminal Court and traffic court sessions are held.
- Trials held in English. For anyone not speaking English an interpreter is provided.
  - French, Mandarin, Punjabi, Arabic

## 6. Operations (cont'd)

- Approx. three sessions per month.
- Currently operating as a “hybrid court.”
  - Conference bridge, Zoom
  - Court sessions resumed in August 2020 as hybrid court, just three months after start of pandemic.
- Solemnization of civil marriages

## 7. Need for a Kahnawà:ke Justice Act (cont'd)

- To ensure continuation of court it was determined there was need for legislation to create a local justice system.
- Submission to community decision-making process for development of a justice act.
  - Process by which community reaches consensus on community laws.

## 7. Need for a Kahnawà:ke Justice Act (cont'd)

- Community creates laws through consensus-based process with ratification by Council.
- *Kahnawà:ke Justice Act* (“Act”) formally enacted in 2015, after extensive communication and consultation with community from 2007-2014.
- Enactment was a beginning, not an end....

## 8. Kahnawà:ke Justice Act - General

- Establishes Kahnawà:ke Justice System and judicial forums to adjudicate and interpret laws applicable to Kahnawà:ke in order to maintain peace, order and justice.
- Article 1.1 (Jurisdiction):

*“We, the People, have the ultimate and exclusive power, right and jurisdiction, to maintain peace, order and justice. To this end, we hereby institute judicial forums within the Territory as an exercise of our sovereign rights.”*

## 8. Kahnawà:ke Justice Act - General (cont'd)

- Four (4) different forums:
  1. Skén:nen Aonsón:ton (RJ/ADR);
  2. Administrative Tribunal;
  3. Court of Kahnawà:ke; and
  4. Kahnawà:ke Court of Appeal.

## 9. Skén:nen Aonsón:ton

- Cornerstone of justice system. First recourse to resolving conflict. Established in 2000.
  - Mediation, conflict resolution, restorative justice forums
- Emphasizes repairing harm caused, resolving conflict in peaceful, non-adversarial way.
- Not based on punishment but encourages dialogue and accepting responsibility for past behavior while focusing on problem solving.

## 9. Skén:nen Aonsón:ton (cont'd)

- Extract from article 6.1 of Act:

*“The principles embodied in the process are a holistic approach to address conflict. This approach respects concepts historically used by Kanien’kehá:ka to resolve disputes and conflict.”*

- Protocols finalized for diversion of criminal files from both Court of Kahnawà:ke and Provincial Court.



## 10. Administrative Tribunal

- Adjudicator or panel of adjudicators charged with reviewing decisions of administrative branch of government and where appropriate to correct an error or fault.
- In general, it will review and determine:
  - 1) Whether due process was followed,
  - 2) Whether laws of natural justice were adhered to,
  - 3) Ensure absence of bias, ensure the decision was reasonable,
  - 4) Determine whether there was absence of jurisdiction, or,
  - 5) If there was a mistake of law.

## 10. Administrative Tribunal (cont'd)

- Regulations nearly complete:
  - Institution & Management;
  - Selection & Appointment;
  - Rules of evidence and procedure; and
  - Disciplinary measures

## 10. Administrative Tribunal (cont'd)

- Multiple laws and regulations will link to Tribunal.
  - Laws x 9
  - Regulations/policies/etc x 6
- Not just establishing an administrative tribunal, but a comprehensive system of administrative justice for community.

## 11. Court of Kahnawà:ke

- Article 8.1 of Act:

*“The Court of Kahnawà:ke is the court of original general jurisdiction within the Territory in all civil, criminal and penal matters. It hears in first instance every matter not assigned exclusively to another Kahnawà:ke court or administrative tribunal by Kahnawà:ke Law.”*

- Not quite “all” criminal matters...

## 11. Court of Kahnawà:ke (cont'd)

- Court of Kahnawà:ke = Power of judicial review
- Preliminary planning completed. Development of structure to start early 2024.
- Focus on hearing community laws as a start

## 12. Kahnawà:ke Court of Appeal

- Jurisdiction to hear appeals in criminal, penal and civil matters.
- Pool of appeal judges may include judges from the Court of Kahnawà:ke or accredited judges from other communities with whom Kahnawà:ke has a reciprocal agreement on qualifications.

## 13. LESSONS LEARNED SO FAR...

- Be prepared for amount of “architecture” required (policies, procedures, forms, guidelines, regulations).



## **13. LESSONS LEARNED SO FAR... (cont'd)**

- Realistic expectations – won't be built in a day (or maybe even years...)
- Get house in order (mandates, authorities, staff)
- Make judgments publicly available. Important to create an accessible body of caselaw.



## **13. LESSONS LEARNED SO FAR... (cont'd)**

- Judicial independence - in fact and perception.
- Foster public confidence in your justice institutions.

## FOR FURTHER REFERENCE

- Kahnawà:ke Justice Act  
<http://www.kahnawakemakingdecisions.com/legislation/>
- Skén:nen Aonsón:ton  
<http://www.kahnawakeadr.com/evolution.htm>
- Kahnawà:ke Decision-making and Review Process  
<http://www.kahnawakemakingdecisions.com/>