



Mohawk Council of Akwesasne

Iatathróna Raotientáhtsera “Couples Property” Regulation

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Contents

Purpose.....	2
1.0 Title.....	2
2.0 Definitions.....	2
3.0 Interpretation.....	2
4.0 Waiver of Regulation by Agreement	3
5.0 Non-compliance with the Regulation	3
6.0 Extend or abridge timelines	3
7.0 Forms for Applications	3
8.0 Parties to Applications	3
9.0 Commencement of Applications.....	4
10.0 Service.....	5
11.0 Reply to Application	5
12.0 Mandatory Mediation.....	6
13.0 Consent Order in Court Managed Mediation.....	6
14.0 Pre-Hearing Conference.....	6
15.0 Hearing Procedures	7
16.0 Discontinuance and Withdrawal	8
17.0 Amendments	8

Purpose

The objective of this Regulation is to secure the just, efficient, and least expensive determination of every Application.

1.0 Title

1.1 This Regulation shall be known as the Iatathróna Raotientáhtsera “Couples Property” Regulation.

2.0 Definitions

2.1 In this Regulation, unless the context otherwise requires:

“**Applicant**” means any person who makes an Application pursuant to this Regulation;

“**Application**” means an Application started by filing a Notice of Application;

“**Court**” means the Akwesasne Mohawk Court or Justice thereof whether sitting in Court or in chambers until such time as an Iroquois Dispute Resolution Tribunal is established;

“**Court Clerk**” means the Court clerk of the Akwesasne Mohawk Court;

“**Justice**” means a Justice of the Akwesasne Mohawk Court;

“**Law**” means Iatathróna Raotientáhtsera “Couples Property” Law;

“**Order**” means an order or other decision or judgment of the Court;

“**Party**” means any person named in an Application pursuant to this Regulation;

“**Respondent**” means any person who responds or replies to an Application;

“**Regulation**” means this Regulation ratified in accordance with the Iatathróna Raotientáhtsera “Couples Property” Law.

3.0 Interpretation

3.1 When calculating the number of days for the purposes of establishing a deadline, the following guidelines shall be used:

- a) unless otherwise provided, Saturdays, Sundays, federal holidays, provincial holidays, Council declared holidays or the day of an event are not included in the calculation of number of days for completing an act or meeting a deadline; and
- b) if Council administration offices are closed on a day when a time limit expires, the act may be done on the next day that the office is open.

- 3.2** Wherever the singular, or masculine or the term “person” is used in this Regulation, it shall be deemed to include the plural, feminine, body corporate or other entity where the context so requires.
- 3.3** In the event that inclement weather prohibits carrying out of an act under this Regulation, the act may be done on the next available day.

4.0 Waiver of Regulation by Agreement

- 4.1** Unless the Court otherwise orders, the parties to an Application may agree to waive any part of this Regulation.

5.0 Non-compliance with the Regulation

- 5.1** A failure to comply with this Regulation shall be treated as an irregularity and shall not nullify the Application, any step taken in the Application, or any document, or order therein, and the Court may grant all necessary relief to secure the just determination of the real matters in dispute.

6.0 Extend or abridge timelines

- 6.1** The Court may, on such terms as it thinks just, extend or shorten the period within which a person is required or authorized by this Regulation, or by any order, to do or abstain from doing any act.
- 6.2** The extension or shortening of the period shall not be granted where the extension or abridgement is used to unnecessarily delay, or otherwise interfere with, the Applications.

7.0 Forms for Applications

- 7.1** The forms in the appendices, or as otherwise prescribed, shall be used where applicable with such variation as the circumstances of the Application require.

8.0 Parties to Applications

- 8.1** **Joining Parties** – Subject to the discretion of the Court, two or more persons, with leave of the Court, may be joined together in one Application as either Applicants or respondents.

- 8.2 Change of Parties** – The Court may at any stage of a Application, on an *ex parte* Application or its own motion, if it thinks it necessary in order to ensure that all matters in the Application may be heard, order any person to be made a party to a Application.
- 8.3** Any person made a party under this Regulation may, within ten days after service of the order on them, apply to the Court to have the order discharged or varied.
- 8.4** A party may be represented in a Application by any competent person who will abide by this Regulation.
- 8.5 Third Person as Party** – Any person may, with leave of the Court and subject to enactments respecting confidentiality, intervene in a Application where such person claims, and to the satisfaction of the Court by the filing of an affidavit containing the grounds for the intervention, can show a direct interest in the subject matter of the Application.
- 8.6 Friend of the Court** – Any person may, with the leave of the Court and without becoming a party to a Application, intervene in the Application as a friend of the Court for the purpose of assisting the Court with the determination of any Application.

9.0 Commencement of Applications

- 9.1 Starting an Application** – Any person who wishes to start an Application under this Regulation must file an Application in Form X containing the following information:
- a) the full names of the parties to the Application;
 - b) detailed explanation of the reasons for the Application;
 - c) copies of any documents on which the Applicant intends to rely
 - d) contact information for the Applicant or his/her designated representative; and
 - e) contact information for the respondent
- 9.2 Applications in Triplicate** – Applications must be filed in triplicate with the Court Clerk. One copy shall be kept by the Court for the file, one copy shall be served on the Respondent, and one copy shall be kept by the Applicant.
- 9.3 Clerk to Issue Application** – On receiving a completed Application in Form X, the Court Clerk shall issue the Application by:
- a) inserting on the Application a file number and date of filing;
 - b) impressing thereon his or her signature and the seal of the Court;
 - c) affixing the place, time and date of the hearing, if applicable;
 - d) filing a true copy thereof in his or her office; and
 - e) filing a copy of the Application with the Office of Vital Statistics.
- 9.4 Confidential Contact Information** – The Court Clerk may direct that contact information be kept confidential and may assist a party to designate a neutral address for delivery if the Court Clerk is satisfied that a person may be at risk of harm.
- 9.5 Ex Parte Applications** – Any Applicant may request than an Application under this Regulation be heard *ex parte* without any notice to third parties or service in accordance with section 10.0. Any request for an *ex parte* Application shall be accompanied by

detailed written reasons as to why the Application should proceed on an ex parte basis and shall be supported by true copies of affidavits in support of such reasons. Ex parte Applications shall only be granted on an exceptional basis in order to be used in support of the Application.

10.0 Service

- 10.1** An Application in Form X or Reply to Application in Form Y shall be served personally as provided in rule 10.3 or by an alternative to personal service as provided in rule XX
- 10.2** An Application in Form X shall be served within six months after the date it is issued, but the Court may grant an extension to the time for service.
- 10.3** If a document is to be served personally, service shall be made by leaving a copy of the document with the individual in question.
- 10.4 Alternative to Personal Service** – If an attempt is made to effect personal service at an individual’s place of residence and for any reason personal service cannot be effected, the document may be served by leaving a copy in a sealed envelope addressed to the individual at the place of residence with anyone who appears to be an adult member of the same household.
- 10.5 Substituted Service** – If it is shown that it is impractical to effect prompt service of an Application personally or by alternative to personal service, the Court may make an order for substituted service or, where necessary in the interests of justice, may dispense with service altogether.
- 10.6 Proof of Service** – An Affidavit of Service in Form Z made by the person who served the document constitutes proof of service of a document.
- 10.7 Failure to Receive Document** – A person who has been served or who is deemed to have been served with a document in accordance with this Regulation is nevertheless entitled to show, on a motion to set aside the consequences of default, on a motion for an extension of time or in support of a request for an adjournment, that the document:
- a) did not come to the person’s notice; or
 - b) came to the person’s notice at some time later than when it was served or is deemed to have been served.

11.0 Reply to Application

- 11.1** A respondent who wishes to dispute an Application shall, within 20 days of being served with the Application:
- a) serve a Reply to Application in Form Y on the Applicant; and
 - b) file the reply, together with proof of service, with the Court.
- 11.2 Contents of Reply** – The Reply to Application shall contain the following information:
- a) detailed explanation of the Respondent’s position with respect to the Application;
 - b) copies of any documents on which the Applicant intends to rely; and

- c) contact information for the respondent or his/her representative.

12.0 Mandatory Mediation

- 12.1** Mediation is mandatory for all Applications under the Law in order to reduce cost and delay and facilitate the early and fair resolution of all disputes.
- 12.2** Notwithstanding 12.1, the Court may make an order on a party’s motion exempting any Application from this Regulation.
- 12.3** Mediation under this Regulation shall be in accordance with the Court managed mediation service guidelines/policy.

13.0 Consent Order in Court Managed Mediation

- 13.1** Any person who conducts a Court managed mediation in which the parties reach an agreement on one or more of the issues must prepare a draft consent order that conforms with the agreement and file a copy with the Court.
- 13.2** A draft consent order signed by the parties must be referred to a Justice for approval no less than ten days after the day the draft order is filed, unless a party files a letter of objection in that time.
- 13.3** When an objection to a draft consent order is filed within the time provided in this Regulation, the Court Clerk may either refer the issues back for Court managed mediation or arrange for the parties to appear before a Justice.
- 13.4** **“Notice to Appear in Court” after Mandatory Mediation** – A Court Clerk shall issue a “Notice to Appear in Court” which shall be in Form A when the following conditions have been established:
 - a) the Application is not withdrawn or discontinued;
 - b) the Application is not resolved by a consent order following Court managed mediation;
 - c) the Application is not resolved by a consent order or written agreement, including a separation agreement or minutes of settlement, filed by a party;
 - d) the Applicant has filed all affidavits, documents, statements, and supporting disclosure required by this Regulation; and
 - e) the respondent has filed all affidavits, documents, statements, and supporting disclosure required by this Regulation, or all reasonable steps have been taken to obtain the required information.
- 13.5** Notwithstanding any provision of this Regulation, at any stage of the Application, the Court Clerk may refer any matter to a Justice for direction, conference and/or order.

14.0 Pre-Hearing Conference

- 14.1** A Justice or the Court Clerk may arrange a pre-hearing conference.

- 14.2** A Justice may give directions for the conduct of an Application and, otherwise, provide case management.
- 14.3** A Justice who conducts a pre-hearing conference may give direction or make an order as follows:
- appoint a time, date, and place for a settlement conference if all of the parties agree to participate;
 - set a time, date, and place for a further conference to organize the hearing of the Application;
 - require a party to present direct evidence by calling a witness rather than presenting an affidavit from the witness;
 - appoint a time, date, and place for the hearing of the Application; or
 - do any other thing that may aid the disposition of the Application.
- 14.4** A Justice who presides at a prehearing conference where one party fails to appear may do any of the following:
- make an interim or final order
 - order costs against the party; and
 - hold the party in contempt of court.
- 14.5** A Court Administrator who presides at a prehearing conference under a designation by a Justice may recommend to a Justice that the Justice do anything provided for in section 14.4
- 14.6 Prehearing Conference Procedure** – In any Application the Court may, on its own motion or on the Application of any party, direct the parties to appear for a conference to consider:
- simplification of the issues;
 - necessity or desirability of an amendment to any Application;
 - possibility of obtaining admissions of fact;
 - limiting the number of witnesses;
 - organizing the trial process including the production of documents, affidavits, exhibits and determining the witnesses who are to testify;
 - providing interim relief;
 - any other matter that may aid in the disposition of the Application.
- 14.7 Prehearing Conference - Order and Direction** – Following the prehearing conference the Court may make an order reciting the results and giving such directions as the Court deems advisable and the order, when entered, shall control the subsequent course of the Application, unless or until modified by the Court.

15.0 Hearing Procedures

- 15.1 Failure to Attend Hearing** – When an Application is called for hearing and any party fails to appear, the Court may:
- proceed with the hearing, or any issue therein, in the absence of the party;

- b) if the Applicant appears and the respondent fails to appear, allow the Applicant to prove the Application and dismiss a reply, if any;
 - c) if the Applicant fails to appear and the respondent appears, dismiss the Application and allow the respondent to prove the reply, if any;
 - d) make such other order as the Court deems just and appropriate in the circumstances.
- 15.2 Court Satisfied as to Notice** – Judgment on a failure to appear shall not be entered against a respondent under this Regulation unless the Court is satisfied the respondent had notice of the hearing or had been served as directed by this Regulation or the enactment under which the Application was made.
- 15.3 Adjournment of Hearing** – Where a hearing cannot be conveniently heard or completed at a sitting, the Court may adjourn the hearing to another day and time.
- 15.4 Subpoena** – The Court Clerk or any Justice may, in his or her discretion, or at the request of a party, issue a subpoena requiring the person named in the subpoena to attend the Court at the time and place stated, and to produce certain documents, if applicable, at the hearing.
- 15.5 Service of Subpoena** – A copy of the subpoena shall be served by personal service or alternative to personal service in accordance with section 10.0 of this Regulation no later than ten days before the date of the hearing.

16.0 Discontinuance and Withdrawal

- 16.1** At any time after an Application is begun an Applicant may withdraw the Notice of Application in whole or part or a respondent may withdraw the Reply to Application in whole or part by filing and serving a Notice of Withdrawal in Form A.
- 16.2** Upon the filing of a Notice of Withdrawal in Form A, the Court may grant an order containing terms as to costs, or the bringing of any subsequent Application regarding the same or substantially the same subject matters.

17.0 Amendments

- 17.1** Any member of Council may make a motion to amend this Regulation.
- 17.2** Notice of the proposed amendment shall be given to Council at least one week prior to the vote for the proposed amendment.
- 17.3** The Council shall consider the proposed amendment at a duly convened meeting and shall conduct a vote in accordance with the Mohawk Council of Akwesasne Procedure Regulations.