

**PROTOCOL ON SETTLEMENT CONFERENCES
IN THE MOHAWK TERRITORY OF KAHNAWÀ:KE**

BRINGING TOGETHER:

COURT OF QUÉBEC

(represented by The Chief Justice of the Court of Québec , the honorable Lucie Rondeau and the coordinating Judge of the Court of Québec for Montérégie, the honorable Mélanie Roy)

and

MOHAWK COUNCIL OF KAHNAWÀ:KE

(represented by Tonya Perron, Justice Portfolio Chief, Mohawk Council of Kahnawà:ke)

and

KAHNAWÀ:KE SHAKOTIIA'TAHEHNAS COMMUNITY SERVICES

(represented by Derek Montour, Executive Director, Kahnawà:ke Shakotia'tahehnas Community Services)

and

YOUTH PROTECTION OF MONTÉRÉGIE

(represented by Marie-Josée Audette, Youth Protection Director of Montérégie)

WHEREAS the *Youth Protection Act* favors the use of alternative dispute resolution methods and requires the parties involved in youth protection proceedings (child, parents, Director of Youth Protection Caseworker) to take them into account at all stages of the legal process;

WHEREAS the Court of Québec has an obligation to act diligently to ensure the protection of the child;

WHEREAS the *Youth Protection Act* principles outlines the following:

- 1) The protection of children is a collective responsibility that requires the mobilization and collaboration of all the resources in the community in order to limit the State's authority in intervening in the lives of families under the *Youth Protection Act* to exceptional situations;
- 2) The child and their parents have the right to have their voices heard in regards to decisions that concern them. Consideration of their opinion has the effect of further empowering them to act.
- 3) Indigenous people are best suited to meet the needs of their children in the manner that is most appropriate;

4) Cultural safety is essential to the well-being of Indigenous children;

Interventions in regard to an Indigenous child must be carried out taking into account the circumstances and characteristics of his community or of another environment in which they live so as to respect their right to equality and foster cultural continuity.

WHEREAS the Court of Québec offers the parties the opportunity of taking part in a settlement conference, with the accompaniment of a facilitating judge;

WHEREAS a settlement conference is a method of dispute resolution which allows the parties to work towards a mutually satisfactory resolution of the recognized issues, within the foundation of the child's best interests and rights;

WHEREAS settlement conferences are held outside a courtroom setting, in specially designated rooms to allow for more relaxed, informal and confidential discussions;

WHEREAS section 76.3 of the *Youth Protection Act* provides that at any time, including after a settlement conference, the parties may submit a draft agreement or a settlement to the tribunal or to the facilitating judge of the settlement conference;

WHEREAS section 76.4 of the *Youth Protection Act* provides that after verifying that the measures proposed in the draft agreement or settlement respect the rights and interest of the child, the court or the facilitating judge of the settlement conference may order the implementation of those measures, or any other measures considered appropriate;

WHEREAS a settlement conference is offered to parties that want one, in order to facilitate harmony between the parties involved in a dispute, in the interest of the child and in keeping with his or her rights;

WHEREAS the Mohawk Council of Kahnawà:ke and the Court of Québec jointly wish to facilitate access to the settlement conference process by providing parties with the option of holding settlement conferences within the Mohawk Territory of Kahnawà:ke;

WHEREAS the Justice Services Division of the Mohawk Council of Kahnawà:ke will provide administrative support and management of this process within the Mohawk Territory of Kahnawà:ke;

WHEREAS the Mohawk Council of Kahnawà:ke, the Youth Protection Director of Montérégie, KSCS and the Court of Québec agree to the necessity of adopting a protocol for providing the option of holding settlement conferences in the Mohawk Territory of Kahnawà:ke, to come into force upon the signing of these presents.

1. OPERATING GUIDELINES AIMED AT FACILITATING THE HOLDING OF OF SETTLEMENT CONFERENCES IN KAHNAWÀ:KE:

- 1.1 The parties will identify the cases likely to benefit from a settlement conference.
- 1.2 If a settlement conference is requested, the parties will complete the *Joint Request for a Settlement Conference in a Youth Protection Case* form, available on the Court of Québec website. The parties will be provided the option of having the settlement conference take place in the Longueuil Courthouse or in the Mohawk Territory of Kahnawà:ke;
- 1.3 Should the parties decide that the settlement conference will be held in Kahnawà:ke, it will take place in the presence of all the parties and their lawyers, with the accompaniment of a Youth Court judge, in a dedicated room at KSCS's administrative offices in Kahnawake.
- 1.4 The Justice Services Division of the Mohawk Council of Kahnawà:ke will provide administrative support and manage the coordination of the settlement conference process in Kahnawà:ke by:
 - 1) Scheduling the date of the settlement conference;
 - 2) Booking the conference room at KSCS' administrative office and ensuring the preparation of the room; and
 - 3) Arranging for security to be present for the duration of the settlement conference.
- 1.5 The facilitating judge as well as the parties and their attorneys will undertake to keep all information that is disclosed during the conference confidential, save in the following situations:
 - 1) The disclosure of a new circumstance endangering the child's safety or development;
 - 2) The disclosure or commission of a criminal act; and
 - 3) The terms of an agreement following the settlement conference.
- 1.6 During the conference, in view of progressing the discussions, the facilitating judge can express their opinion regarding the situation, but at no time are the parties bound by this opinion.

2. CONFIDENTIALITY

- 2.1 A settlement conference is held behind closed doors and the discussions are not recorded.
- 2.2 A settlement conference is confidential, and all notes are all destroyed upon closure, preferably in the parties presence.

- 2.3 If the parties do not come to an agreement and the child's situation is referred for a court hearing, the facilitating judge may never discuss the case with the adjudicating judge.
- 2.4 The parties participating in a settlement conference are asked to sign a confidentiality agreement when the conference begins.
- 2.5 However, confidentiality is relative since the protection of the child and the public may require that it be lifted for discussions during the conference, particularly if another reason is revealed for believing that the security or development of the child are in danger, or if information regarding the commission of a criminal offence is disclosed.

3. DURATION

- 3.1 A settlement conference session will be scheduled for three (3) hours, but the parties can adjust with respect to the issues to be resolved. The parties may also agree to a follow-up session.

4. OTHER CHARACTERISTICS

- 4.1 The facilitating judge assigned to a settlement conference invites the attorneys and non-represented parties to a preparatory telephone (or visio/TEAMS) conference prior to the date set for the meeting.
- 4.2 The objective of the telephone conference is notably to ensure that everyone involved will be present at the settlement conference, including any children, and that all are informed of the process and are prepared to take part in it. In addition, the role of each person and the required preparation are explained.
- 4.3 The settlement conference will be held in an informal and casual setting.
- 4.4 The facilitating judge will ensure that the conference is held in an amiable atmosphere, conducive to open and fruitful discussions.
- 4.5 At the onset of the settlement conference, the facilitating judge will explain the process and the established rules, including those the interested parties jointly determine.
- 4.6 During the settlement conference, the facilitating judge can meet with one or more of the parties separately in order to better facilitate ongoing discussions if the parties so choose.
- 4.7 Should the parties come to an agreement, the parties and their attorneys are responsible for drafting the agreement. Once this agreement is ready, the facilitating judge will read the draft agreement to the parties and ensure that it reflects the discussions and their consent.

- 4.8 Once the parties come to an agreement, or in the event of an impasse, the settlement conference ends.
- 4.9 In the event of an agreement, the facilitating judge will invite the parties to participate in the adjudication process, whereby the parties will connect virtually to a courtroom in the Longueuil Courthouse.
- 4.10 Once connected, the facilitating judge becomes the adjudicating judge. The adjudicating judge will formalize the agreement by judgment, rendering it enforceable. The parties will receive a copy of this judgment, with the attached agreement, shortly thereafter.
- 4.11 A joint review committee will be established to periodically evaluate this protocol.

This protocol is subject to a mandatory review every five (5) years.

Signed in Kahnawà:ke, this September 12, 2023

(s) Lucie Rondeau

LUCIE RONDEAU, Chief Justice of the Court of Québec

(s) Mélanie Roy

MÉLANIE ROY, coordinating judge of the Court of Québec for the Montérégie

(s) Tonya Perron

TONYA PERRON, Justice Portfolio Chief, Mohawk Council of Kahnawà:ke

(s) Derek Montour

DEREK MONTOUR, Executive Director of Kahnawà:ke Shakotia'tahehnas Community Services

(s) Marie-Josée Audette

MARIE-JOSÉE AUDETTE, Youth Protection Director of Montérégie