

**UMBRELLA**

**January 17, 2001**

**DRAFT UMBRELLA AGREEMENT  
WITH RESPECT TO  
CANADA/ KAHNAWAKE INTERGOVERNMENTAL RELATIONS ACT**

**BETWEEN**

The Mohawks of Kahnawake, acting through the Mohawk Government of Kahnawake, as represented by the Grand Chief of the Mohawks of Kahnawake (hereinafter referred to as "Kahnawake")

**AND**

Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada")

**NOTE: This document will form the basis for consultation by each party.**

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**PREAMBLE**

WHEREAS Kahnawake and Canada signed an Agreement on an *Agenda and Process for the Negotiation of a New Relationship between the Mohawks of Kahnawake and Canada* on December 13, 1991, which has been extended;

AND WHEREAS that Agreement contemplated the negotiation of transitional agreements and a final comprehensive agreement;

AND WHEREAS the parties have now agreed to negotiate an Umbrella Agreement and sub-agreements on jurisdictions to be exercised by Kahnawake;

AND WHEREAS the parties affirm that this Agreement provides for a new relationship which reflects the principles of mutual respect between governments, co-existence, peace and friendship, and Kahnawake affirms that these principles are in keeping with the Two Row Wampum doctrine;

AND WHEREAS the parties recognize the role of the Mohawk Government of Kahnawake in the preservation and promotion of Mohawk identity, culture and way of life;

AND WHEREAS the parties also recognize the Kaniienkehaka of Kahnawake as having a special relationship to the land;

AND WHEREAS this Agreement and the sub-agreements are a means by which the parties will strive to promote, in cooperation with one another, the economic advancement of Kahnawake;

AND WHEREAS the Courts have held that the Crown has a unique, historic, fiduciary relationship with Aboriginal peoples in Canada;

AND WHEREAS the Courts have also held that the honour of the Crown is at stake in its dealings with Aboriginal peoples;

AND WHEREAS Canada recognizes that the inherent right of self-government is an existing aboriginal right within the meaning of section 35 of the *Constitution Act, 1982*.

**NOW THEREFORE THE PARTIES** agree that:

1. The Umbrella Agreement will form the basis for the Legislation to be recommended by Canada to the Parliament of Canada.

## **SHORT TITLE**

2. Canada will recommend that the short title of the Legislation be the Canada/Kahnawake Intergovernmental Relations Act (CKIRA).

## **DEFINITIONS**

3. In this Agreement and any sub-agreement concluded under clauses 9 or 15, unless otherwise specified in that sub-agreement,

“authority” means any power other than the power to enact laws;

“Canada” means Her Majesty the Queen in Right of Canada;

“conflict” means an actual conflict in operation, or operational incompatibility between two laws, such that compliance with one law would necessarily result in a breach of the other;

“DIAND” means the Department of Indian Affairs and Northern Development;

“federal laws that pursue an objective of overriding national importance” mean federal laws in relation to the preservation of peace, order and good government in Canada, as well as other federal laws of like importance;

“interest”, with respect to Kahnawake Territory, means a legal interest, right or estate of any nature in or to that Territory, including a lease, easement, right of way, licence or permit but does not include title to, or an unperfected interest in, that Territory;

“jurisdiction” means the power to enact laws and includes authority;

“Kahnawake or the Mohawks of Kahnawake” means, after the coming into force of the Legislation, the collectivity of the Mohawks of Kahnawake described in clause 58;

“Kahnawake Charter” means the codification of principles and rules of governance applicable to the Mohawk Government of Kahnawake based on the custom and traditions of the Mohawks of Kahnawake;

“Kahnawake Mohawk Custom Code on Membership” means the codification of custom and traditions with respect to membership;

“Kahnawake Lands or Territory” means:

- (a) lands which were, immediately prior to the coming into force of the Legislation, known as Reserve No. 14 and shown on the map attached as Appendix A to this Agreement;
- (b) lands known as Doncaster Reserve No. 17, which lands were set aside for Kahnawake and Kanesatake, and shown on the map attached as Appendix B to this Agreement;
- (c) lands which may be added to lands identified in (a) or (b) before or after the coming into force of the Legislation, through the resolution of land grievances or as the result of any other means, and which both parties agree are lands within the meaning of subsection 91(24) of the *Constitution Act, 1867*; and
- (d) lands previously taken for a public work or other public purpose which are no longer used for the public work or other public purpose and which are returned to Kahnawake as lands within the meaning of subsection 91(24) of the *Constitution Act, 1867*;

“Legislation” means the legislation that will be enacted to implement the Umbrella Agreement;

“member” means a member as defined in the Kahnawake Mohawk Custom Code on Membership;

“Mohawk Government of Kahnawake” means the government of Kahnawake and includes the Mohawk Council of Kahnawake and any future form of government of Kahnawake;

“public official” means any person appointed or otherwise designated by Kahnawake to discharge a public duty;

“sub-agreement” means an agreement with respect to a specific subject matter pursuant to clauses 9 or 15;

“Draft Umbrella Agreement” means this Agreement;

“Umbrella Agreement” means the agreement to be concluded between Kahnawake and Canada substantially in the form of this Agreement.

## **PURPOSES OF THE LEGISLATION**

4. The purposes of the Legislation are:
  - (a) to establish a new relationship between Kahnawake and Canada whereby Kahnawake exercises jurisdiction on subject matters as agreed to by the parties and, where the matter is dealt with in the *Indian Act*, the corresponding provisions of that *Act* are removed; and
  - (b) to establish a mechanism and a process by which sub-agreements will be given effect.

## **NON-DEROGATION**

5. Nothing in this Agreement will be construed so as to abrogate or derogate from the application of section 35 of the *Constitution Act, 1982* to any existing aboriginal or treaty rights of the Mohawks of Kahnawake.

## **KAHNAWAKE GOVERNANCE**

6. Kahnawake affirms that the Kahnawake Charter as developed by Kahnawake, includes or will include, among other matters:
  - (a) provisions for a democratic form of governance;
  - (b) provisions for a law-making process;
  - (c) provisions for leadership selection;
  - (d) provisions for accountability of the Mohawk Government of Kahnawake to its members;
  - (e) conflict of interest rules;
  - (f) provisions for rights of appeal and redress;
  - (g) the principles of Mohawk Government in Kahnawake based on custom, traditions and traditional laws of the Iroquois Confederacy;
  - (h) principles reflecting the special relationship between the Mohawks of Kahnawake and the land;
  - (i) a Code of Rights and Responsibilities of the Mohawks of Kahnawake;
  - (j) the Kahnawake Mohawk Custom Code on Membership;
  - (k) general principles regarding delegation of authority; and
  - (l) a procedure to make amendments which are consistent with the foregoing principles.

7. Kahnawake further affirms that it is engaged in a movement towards a traditional government based on the custom, traditions and traditional laws of the Iroquois Confederacy.
8. The Mohawk Government of Kahnawake and the institutions it creates are governed by the Kahnawake Charter.

## **JURISDICTION**

9. Kahnawake has jurisdiction or authority or both with respect to the following subject matters as set out in sub-agreements corresponding to each subject or subjects:
  - (a) Policing Aspects of Administration of Justice;
  - (b) Administration of Justice excluding Policing;
  - (c) Kahnawake Lands including the Succession of Real Property;
  - (d) Waters;
  - (e) Fisheries and Wildlife;
  - (f) Environment;
  - (g) Natural Resources;
  - (h) Agriculture;
  - (i) Economic Development;
  - (j) Taxation;
  - (k) Membership;
  - (l) Social Services;
  - (m) Health;
  - (n) Marriage;
  - (o) Adoption, Child Welfare and Guardianship of the Person;
  - (p) Property Rights;
  - (q) Divorce;
  - (r) Education, Mohawk Language and Culture;
  - (s) Public Works and Infrastructure;
  - (t) Housing;
  - (u) Traffic and Transportation;
  - (v) Labour and Training;
  - (w) Gaming;
  - (x) Emergency Preparedness;
  - (y) Administration of the Estates of Deceased, Minor and Mentally Incompetent;
  - (z) Successions excluding Succession of Real Property; and
  - (z-1) Sports and Recreation.

10. The parties recognize that certain subject matters in clause 9 may affect areas of provincial jurisdiction. With respect to these subject matters:
  - (a) Kahnawake will negotiate tripartite agreements with Canada and Quebec, or bilateral agreements with both Canada and Quebec; and
  - (b) the parties will make best efforts to ensure that any bilateral agreements between Kahnawake and Quebec, and between Kahnawake and Canada, are not inconsistent with one another.

### **SUB-AGREEMENTS**

11. A sub-agreement will include:
  - (a) a description of the jurisdiction or authority to be exercised by Kahnawake with respect to a specific subject matter;
  - (b) specific rules for resolving conflicts between laws;
  - (c) where appropriate, an identification of those *Indian Act* provisions with respect to a subject matter that will no longer apply;
  - (d) ratification procedures; and
  - (e) any other matters agreed to by the parties.
12. A sub-agreement may combine in any manner, any subject or subject matters listed in clause 9 or any subjects or subject matters which may be agreed upon pursuant to clause 15.
13. Subsequent to the coming into force of the Legislation, a sub-agreement may be brought into effect by Order of the Governor in Council and by resolution of the Mohawk Government of Kahnawake.
14. The Umbrella Agreement will address the form and content of the Order-in-Council referred to in clause 13.
15. The parties may agree to negotiate sub-agreements with respect to a subject matter other than those listed in clause 9.
16. In the event of an agreement pursuant to clause 15, Canada will recommend to Parliament any consequential amendments to clause 9 and the Legislation.
17. The Minister will publish in the *Canada Gazette* and the Mohawk Government of Kahnawake will publish in the official publication of the Mohawk Government of

Kahnawake, notice of the day on which a sub-agreement is brought into effect.

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## **KAHNAWAKE PUBLIC REGISTER**

18. The Mohawk Government of Kahnawake will make provision for public notification of Kahnawake laws.
19. Kahnawake will maintain a public register, containing the Kahnawake Charter and all Kahnawake laws and public records.

## **INTERIM PROVISIONS WITH RESPECT TO ADMINISTRATION OF JUSTICE**

20. Until a sub-agreement under clause 9(b) with respect to the administration of justice is in effect, the following transitional provisions will apply to the interpretation and enforcement of Kahnawake laws on Kahnawake Territory:
  - (a) Kahnawake may appoint persons to act as justices of the peace;
  - (b) sub-agreements may provide that a person appointed as a justice of the peace under clause 20 (a) may try offences established pursuant to Kahnawake laws as specified in the sub-agreement;
  - (c) a justice of the peace will have all the powers necessary for the performance of his or her duties and functions;
  - (d) Kahnawake will ensure the independence and impartiality of the justices of the peace appointed under this part by providing for their security of tenure, financial security and administrative independence. Kahnawake will ensure that, once appointed, justices of the peace may only be removed for misconduct or inability to perform duties after review by an impartial body; and
  - (e) decisions made by a justice of the peace appointed under this part may be appealed to the court of competent jurisdiction that ordinarily hears appeals on summary conviction matters.

## **KAHNAWAKE LANDS**

21. Nothing in this Agreement or any sub-agreement is intended to affect the title to Kahnawake Territory.
22. For greater certainty, Kahnawake Territory is intended to remain lands within the meaning of

subsection 91(24) of the *Constitution Act, 1867*.

23. For greater certainty, the geographical definition of Reserve No. 14 as shown on Appendix A is without prejudice to any Kahnawake land claims or boundary disputes.
24. The integrity of Kahnawake Territory is of fundamental importance to the Mohawks of Kahnawake, and Canada agrees that the size of that Territory will not be diminished.
25. Subject to clauses 26 and 31, on the coming into force of Kahnawake laws with respect to the granting and the regulating of interests in land, rights of lawful possession, which rights are held under the *Indian Act*, or pursuant to the custom of the Mohawks of Kahnawake, will continue. Other interests in Kahnawake Territory will continue in accordance with their terms and conditions, unless Kahnawake and the holder of the interest agree, in writing, to modify such terms and conditions.
26. Subject to clause 29, interests in Kahnawake Territory referred to in clause 25 may be subject to the taking of lands by Kahnawake for its collective or public purposes.
27. On the coming into force of Kahnawake laws with respect to the granting and the regulating of interests in land, all rights and obligations of Her Majesty as grantor with respect to interests granted under the *Indian Act* are transferred to Kahnawake, except those rights or obligations that may be excluded under the sub-agreement with respect to Kahnawake Lands.
28. For greater certainty, any transfer of interests in Kahnawake Territory under clause 27 will include the transfer of all covenants including those covenants which do not touch or concern the land.
29. Interests that exist in Kahnawake Territory when the Legislation comes into force, which interests continue to be used for the public work or other public purpose for which they were originally obtained, are not subject to the taking of land by Kahnawake for its collective or public purposes.
30. Clause 29 does not preclude the return to Kahnawake of lands previously taken for a public work or other public purpose, in the event such lands are no longer used for the public work or other public purpose for which they were originally taken.
31. For greater certainty, all interests in Kahnawake Territory will be subject to Kahnawake laws with respect to Kahnawake Lands.
32. Notwithstanding clause 31, interests in Kahnawake Territory held by Canada will be immune from

the application of Kahnawake laws with respect to Kahnawake Lands to the extent recognized by the Crown law of Canada. Canada will nevertheless comply with Kahnawake laws with respect to Kahnawake Lands whenever possible.

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33. This Agreement and any sub-agreement are not intended to modify any mandates attributed by law to governments and their agencies, in relation to accessing any lands within Canada. These governments and agencies, together with the Mohawk Government of Kahnawake, will take appropriate steps to ensure mutual assistance and cooperation in the exercise of their respective mandates.

### **GENERAL LIABILITY**

34. Kahnawake is not liable in respect of anything done or omitted to be done by Her Majesty in Right of Canada or any person or body authorized by Her Majesty:
- (a) before the coming into force of the Kahnawake laws with respect to the granting and the regulating of interests in land, with respect to capital or revenue moneys; or
  - (b) before the enactment of Kahnawake laws in respect of a subject matter under clause 9 and any to be negotiated under clause 15, with respect to that subject matter.
35. Her Majesty in Right of Canada will indemnify Kahnawake for any loss suffered by Kahnawake as a result of an act or omission described in clause 34.
36. Her Majesty in Right of Canada is not liable in respect of anything done or omitted to be done by Kahnawake or any person or body authorized by Kahnawake:
- (a) after the coming into force of the Kahnawake laws with respect to the granting and the regulating of interests in land, with respect to capital or revenue moneys; or
  - (b) after the enactment of Kahnawake laws in respect of any subject matter under clause 9 and any to be negotiated under clause 15, with respect to that subject matter.
37. Kahnawake will indemnify Her Majesty in Right of Canada for any loss suffered by Her Majesty as a result of an act or omission described in clause 36.

### **DISPUTE RESOLUTION MECHANISM**

38. Subject to the provision of any sub-agreement, the following dispute resolution mechanism applies to disputes between the parties regarding the interpretation, application and implementation of the Legislation and the sub-agreements and the Order-in-Council for each sub-agreement.

#### Negotiations

39. The parties will first attempt to resolve the dispute by negotiation.
40. In the event that the parties do not settle the dispute, the parties may:
  - (a) by agreement, refer the dispute to mediation or arbitration; or
  - (b) institute proceedings in a court of competent jurisdiction.

#### Mediation

41. When the parties have agreed to refer the dispute to mediation, the following rules will apply:
  - (a) the parties will jointly appoint a mediator to the dispute; or
  - (b) the parties will jointly appoint a panel of experts with equal representation from both parties.
42. Within a period of time to be determined, with the parties, in advance of the mediation, the mediator or the panel of experts will provide each party to the dispute with a written report.
43. Each party will bear equally the cost of the mediator.
44. Each party to the dispute will bear the costs associated with its representatives on the panel.
45. If the parties are unable to resolve the dispute by mediation, the parties may:
  - (a) by agreement, refer the dispute to arbitration; or
  - (b) institute proceedings in a court of competent jurisdiction.

#### Arbitration

46. When the parties have agreed to refer a dispute to arbitration, the rules set out in clauses 47, 48 and 49 will apply.
47. Prior to the commencing of arbitration, the parties will determine whether the decision of the arbitrator will be binding or non-binding.
48. The parties will jointly appoint the arbitrator.
49. The arbitrator will reach a written decision within thirty (30) days of completion of the arbitration hearing, unless otherwise agreed.

50. Unless otherwise assigned by the arbitrator, each party will bear equally the cost of the arbitration.

Judicial review

51. The decision of the arbitrator is not subject to appeal or judicial review in any court of competent jurisdiction, except on the ground that the arbitrator failed to observe the principles of natural justice or otherwise acted beyond or refused to exercise his or her jurisdiction.

52. The parties will address the following issues in the Umbrella Agreement:

- a) notice requirements;
- b) time limits and procedures for selecting mediators or panel members;
- c) procedures for appointment of arbitrators and for the arbitration process; and
- d) next steps in case of disagreement as to whether a decision of the arbitrator is binding or not.

**PROCEDURE FOR REMOVAL OF *INDIAN ACT***

53. Unless otherwise provided in a sub-agreement, the Mohawk Government of Kahnawake will notify Canada, in writing, of the date upon which any law passed pursuant to a sub-agreement under clause 9 or any subject to be negotiated under clause 15 are scheduled to take effect.

54. Canada will acknowledge to the Mohawk Government of Kahnawake receipt of the notification under clause 53 and those *Indian Act* provisions identified in the relevant sub-agreement in respect of the subjects or issues dealt with in the law will no longer apply to Kahnawake as of the date upon which:

- (a) the law is scheduled to take effect, or
- (b) the relevant sub-agreement is given effect by Order-in-Council, or
- (c) the date Canada acknowledges the receipt,

whichever is the latest.

## **RELATIONSHIP OF LAWS**

55. Kahnawake laws enacted pursuant to sub-agreements will apply to their fullest extent in Kahnawake Territory.
56. Where agreed by the parties, sub-agreements may provide that, in the event of a conflict between the provisions of a Kahnawake law and the provisions of a federal law, the provisions of the Kahnawake law will prevail.
57. Notwithstanding clause 56, the parties acknowledge that Canada has enacted, and will continue to enact, laws that pursue an objective of overriding national importance. In the event of a conflict between the provisions of a Kahnawake law and the provisions of a federal law that pursues an objective of overriding national importance, the provisions of the federal law will prevail.

## **TRANSITION PROVISIONS WITH RESPECT TO THE *INDIAN ACT***

58. Kahnawake is the collectivity of the Mohawks of Kahnawake known, prior to the coming into force of the Legislation, as the Kahnawake Band.
59. Kahnawake will succeed to the collectivity known as the Kahnawake Band in all its rights, titles, interests, assets, obligations and liabilities including those of its Band Council.
60. Provisions of the *Indian Act* that have not been replaced by Kahnawake laws in accordance with the Umbrella Agreement and the Legislation will apply, with such modifications as required, to the Mohawk Government of Kahnawake, Kahnawake members and Kahnawake Territory.
61. For greater certainty, all persons who may be residing on Kahnawake Territory, from time to time, will be subject to Kahnawake laws. Nevertheless, no person will lose his or her residency status solely because of his or her membership in the previous Kahnawake Band.
62. The parties are further committed to ensuring an effective and efficient transition from the application of the *Indian Act* provisions on membership to the application of Kahnawake Law with respect to Membership.
63. The Umbrella Agreement will identify the *Indian Act* provisions that will cease to apply when the CKIRA comes into force or at some future point in time, and will provide that section 35 of the *Indian Act* ceases to apply, subject to consultation with the Government of Quebec.

## **MONEYS HELD FOR THE KAHNAWAKE INDIAN BAND**

64. All capital and revenue moneys collected, received or held by Canada pursuant to the *Indian Act* for the use and benefit of Kahnawake will be transferred to Kahnawake as soon as possible after the enactment of the Kahnawake laws with respect to the granting and the regulating of interests in land.

## **DELEGATION OF POWERS BY KAHNAWAKE**

65. In accordance with the Kahnawake Charter, Kahnawake may delegate any of its non-legislative powers under this Agreement to any Kahnawake institutions or to any other legal entity in Canada.
66. For greater certainty, Kahnawake, whether acting on its own, through the Mohawk Government of Kahnawake or through any body it designates in accordance with the Kahnawake Charter, is a legal entity with the rights, powers, privileges and capacity to:
- (a) enter into contracts and agreements;
  - (b) acquire, hold and dispose of real or personal property, or any interest therein;
  - (c) raise, borrow, lend, invest or otherwise expend moneys, or provide guarantees in respect of the repayment of any moneys;
  - (d) act as the settlor or trustee of any trust;
  - (e) sue and be sued; and
  - (f) be appointed and to act as a guardian.
67. Nothing in this Agreement will be interpreted to mean that Kahnawake whether acting on its own, through the Mohawk Government of Kahnawake or through anybody it designates, is a corporation.

## **GENERAL PROVISIONS**

68. The parties acknowledge that all persons, including the Mohawks of Kahnawake, may avail themselves of the rights and freedoms that are guaranteed by the *Canadian Charter of Rights and Freedoms*, and that this Agreement and the sub-agreements are not intended to diminish those protections for any persons who are subject to the laws of Kahnawake. In that spirit, the parties agree that the laws and executive actions of the Mohawk Government of Kahnawake will respect the rights and freedoms guaranteed by the *Charter*.
69. Clause 68 is without prejudice to Kahnawake's ability to advance its view, in any forum, that its

distinctive philosophies, traditions and cultural practices should be taken into account in interpreting section 25 of the *Charter*, which provides that the guarantee in the *Charter* of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada.

70. Notwithstanding this Agreement and any sub-agreement, the fiduciary relationship between the parties will continue.
71. As Kahnawake exercises jurisdiction or authority in accordance with a sub-agreement, the fiduciary obligations of the Crown in Right of Canada will evolve accordingly.
72. For greater certainty, and subject to clause 73, federal laws will continue to apply in co-existence with any Kahnawake laws.
73. The Umbrella Agreement or a sub-agreement may stipulate that provisions of certain federal laws cease to apply to Kahnawake, the Mohawk Government of Kahnawake, Kahnawake Lands, or members and other individuals subject to Kahnawake laws in accordance with this Agreement.
74. For greater certainty, Kahnawake's jurisdiction as set out in sub-agreements does not relate to those matters within Canada's jurisdiction under s. 91(27) of the *Constitution Act, 1867*.
75. Notwithstanding clause 74, Kahnawake laws enacted pursuant to sub-agreements may provide for the imposition of penalties for the violation of those laws. Such penalties, which may include fines, restitution and imprisonment, will be within the limits set out for summary conviction offences in the *Criminal Code* of Canada, or the *Code de procédure pénale du Québec*, whichever are greater. Sub-agreements may provide for specific exceptions to these penalty limits and may provide for other types of sanctions that are in keeping with the traditions of the Mohawks of Kahnawake.
76. Clause 75 does not preclude the negotiation, in an administration of justice sub-agreement, of procedures for the adjudication of Kahnawake laws.
77. Kahnawake laws enacted pursuant to a sub-agreement may provide for the administrative review of decisions made by public officials with respect to the application or interpretation of those Kahnawake laws.
78. Any exercise of jurisdiction by Kahnawake in Doncaster Reserve No 17 will be in accordance with an agreement between the parties for whom those lands were set aside.
79. For greater certainty, Kahnawake laws enacted pursuant to the sub-agreement with respect to Education, Mohawk Language and Culture will not prohibit Canada from providing any programs and services in Kahnawake Territory in both English and French.

80. The Umbrella Agreement or a sub-agreement, as the case may be, will prevail over the Legislation or the relevant Order-in-Council, as the case may be, to the extent of any conflict.
81. The Legislation or the relevant Order-in-Council giving effect to a sub-agreement, as the case may be, will prevail over any other federal laws to the extent of any conflict.
82. For greater certainty, all individuals who are subject to the laws or decisions of Kahnawake will, in accordance with Kahnawake's traditions, be afforded the opportunity to express their views on those laws and decisions.
83. All individuals subject to Kahnawake laws or decisions may avail themselves of any appeal or redress process or mechanisms established by Kahnawake pursuant to its Charter or its laws.

## **FISCAL RELATIONS**

### General Principles

84. The fiscal relationship between Canada and Kahnawake will be on a government-to-government basis.
85. In general, financing of agreed-upon public services, programs and the Mohawk Government of Kahnawake is a shared responsibility between Canada and Kahnawake. Nevertheless, other financing arrangements may be made from time to time with the Government of Quebec.
86. Funding will be provided to Kahnawake in order to enable the provision of agreed-upon public services and programs at levels reasonably comparable to those generally prevailing in communities of similar economic circumstances in southern Quebec, while taking into consideration Kahnawake's contribution to the funding of agreed-upon public services and programs.
87. The level of funding required to fulfill commitments made under clause 86 will be negotiated and set out in a Financial Transfer Agreement.

### Funding of Kahnawake's Government and Institutions

88. When negotiating a Financial Transfer Agreement, the parties will take into consideration, among other matters:
  - (a) costs necessary to cover one-time implementation requirements as a result of the Umbrella Agreement and any sub-agreement that is given effect at the time of the Legislation;

- (b) costs to operate the Mohawk Government of Kahnawake and its institutions;
- (c) levels of support provided by other governments to Kahnawake;
- (d) the jurisdiction or authority expected to be exercised by Kahnawake during the duration of the Financial Transfer Agreement, acknowledging that the exercise, in itself, of Kahnawake's jurisdiction or authority does not necessarily create or imply any financial obligation for either party,
- (e) efficiency and cost-effectiveness of the administration of governance and delivery of related services;
- (f) the desirability of stable, predictable and flexible funding arrangements;
- (g) training requirements as agreed upon in the implementation plan for the Umbrella Agreement and the sub-agreements; and
- (h) provisions to adjust the schedules of the Financial Transfer Agreement.

#### Financial Transfer Agreement

- 89. Prior to the ratification of the Umbrella Agreement, and thereafter at five year intervals or at such other intervals as the parties may agree, the parties will negotiate a Financial Transfer Agreement.
- 90. Financial transfer payments made pursuant to a Financial Transfer Agreement will be provided on the basis of block transfer payments. In specific cases, the provision of funds may be subject to criteria or conditions.
- 91. Accountability to members is the responsibility of the Mohawk Government of Kahnawake and will be consistent with standards generally accepted in Canada for governments.
- 92. Kahnawake will adopt measures to ensure that funds appropriated by Parliament have contributed to the objectives for which they were voted.
- 93. The Financial Transfer Agreement will include provisions which enable the appropriate federal Ministers to fulfill their accountability requirements to Parliament of Canada.
- 94. The parties will address the following, among other matters, in the Financial Transfer Agreement:
  - (a) procedures for negotiating the next Financial Transfer Agreement;
  - (b) procedures for assuming the responsibility for the provision of agreed-upon programs and services;
  - (c) procedures for funding and assuming responsibility for the provision of additional programs and services during the term of the Financial Transfer Agreement;
  - (d) procedures for covering the costs resulting from emergencies and disastrous events;
  - (e) payment procedures;
  - (f) information exchange; and

- (g) implementation of an Own Source Revenue Capacity Agreement, pursuant to clause 96.

#### Future Programs

95. Persons residing in Kahnawake will be eligible to receive public services from Canada and to participate in programs established by Canada in accordance with conditions in effect from time to time, to the extent that Kahnawake is not providing such services or programs under a Financial Transfer Agreement.

#### Kahnawake's Financial Self-Reliance

96. The parties will conclude an agreement specifying how and to what extent Kahnawake's own source revenue capacity will be taken into consideration in Financial Transfer Agreements at the time of the second Financial Transfer Agreement or no later than 7 years after the signature of the first Financial Transfer Agreement.
97. The parties acknowledge that Kahnawake's ability to become financially self-reliant will increase as sub-agreements are given effect and Kahnawake exercises jurisdiction thereto. To that extent, the negotiations of the agreement referred to in clause 96 will take into consideration:
- (a) that Kahnawake's access to own source revenue capacity will be incremental;
  - (b) that the calculation of own source revenue will be phased-in;
  - (c) that reasonable incentives for revenue generation are necessary; and
  - (d) any arrangements on own source revenue capacity that Quebec and Kahnawake may negotiate.
98. Any additional principles by which Kahnawake's own source revenue capacity will be taken into account will be set out in the Umbrella Agreement.
99. The Implementation Plan for a sub-agreement will address any matters related to the implementation of the own source revenue capacity agreement.
100. In accordance with provisions contained therein, Financial Transfer Agreements may be adjusted to address changes resulting directly from the conclusion of new sub-agreements. Any such changes to a Financial Transfer Agreement will not diminish the level of services provided pursuant thereto.

#### **LEGISLATIVE PROCESS**

101. Canada will consult Kahnawake during the drafting of the Legislation and any Order-in-Council giving effect to a sub-agreement by:

- (a) providing copies of legislative proposals to Kahnawake;
- (b) providing full opportunity and ensuring that Kahnawake has a reasonable period of time to present its views and comments on the drafts of such Legislation or Orders-in-Council at meetings with Canada.

102. Canada will consider any comments made by Kahnawake on the content of such draft Legislation or any draft Order-in-Council as to whether they accurately reflect either the Umbrella Agreement or a sub-agreement, whichever the case may be.

103. Canada will include in the Legislation a process to provide Parliament with an opportunity to review a sub-agreement and the accompanying Order-in-Council and will provide to Kahnawake a description of the review process to be included in the Legislation.

#### **CANADA/KAHNAWAKE COMMISSION**

104. The parties will establish a Canada/Kahnawake Commission (the Commission), that will be the forum for liaison between them based on a government to government relationship and for review of the implementation of the Umbrella Agreement and sub-agreements.

105. The responsibilities of the Commission will include, among other matters:

- (a) maintaining on-going liaison activities to make recommendations:
  - i) for the resolution of any issues regarding the interpretation, application and implementation of the Umbrella Agreement, the Legislation, the sub-agreements and corresponding Orders-in-Council; and
  - ii) on possible harmonization measures and potential conflicts between Kahnawake and federal laws;
- (b) unless otherwise agreed between the parties, conducting a review, within five years of the enactment of the Legislation, to consider the following:
  - i) whether the Umbrella Agreement, the Legislation, the sub-agreements and corresponding Orders-in-Council in effect at that date have been implemented in accordance with their implementation plans;

- ii) whether any other matters are affecting the implementation of the Umbrella Agreement, the Legislation, the sub-agreements and corresponding Orders-in-Council in effect to date;
- iii) whether any amendments to the Legislation and the Order-in-Council should be considered;

and making recommendations to address issues arising from the review.

106. The Commission will consist of, but not be restricted to, four members, two named by Kahnawake and two named by Canada.
107. Any tripartite or bilateral agreements negotiated by Kahnawake with Canada and Quebec, within the meaning of clause 10, may provide for modification to the composition and the mandate of the Commission.
108. Each party will bear the costs associated with its representatives on the Commission.

#### **JUDICIAL REVIEW**

109. In the event that any provision in this Agreement or a sub-agreement is deemed void or invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

#### **STATUS OF THIS AGREEMENT**

110. The parties agree to use this Agreement as the basis for negotiating an Umbrella Agreement.
111. This Agreement does not create legal obligations binding on the parties.

#### **RATIFICATION PROCEDURES**

112. Rules and procedures for ratifying the Umbrella Agreement, the sub-agreements with respect to Education, Mohawk Language and Culture, Kahnawake Lands, Membership and Policing will be developed prior to the beginning of the ratification process.
113. For greater certainty, Kahnawake will adopt the Kahnawake Charter prior to or at the same time as the Umbrella Agreement and the sub-agreements referred to in clause 112.

114. Canada will have ratified the Umbrella Agreement and the sub-agreements on Education, Mohawk Language and Culture, Kahnawake Lands, Policing and Membership, when:

- (a) the Umbrella Agreement and sub-agreements are signed by a Minister of the Crown authorized by the federal Cabinet; and
- (b) Legislation giving effect to the Umbrella Agreement is passed by Parliament and comes into effect; and
- (c) a sub-agreement is brought into effect by Order-in-Council approved by the Governor in Council.

## **AMENDMENT PROVISIONS**

### Amendments to the Umbrella Agreement

115. The parties may agree to amend the Umbrella Agreement.

116. Kahnawake will ratify the amendments to the Umbrella Agreement based on the principles of the Kahnawake Charter.

117. Canada will recommend to Parliament any consequential amendments to the Legislation.

### Amendment to Orders-in-Council

118. The parties may agree to amend any sub-agreements.

119. Kahnawake will ratify the amendments in accordance with the Kahnawake Charter.

120. Canada will recommend to the Governor in Council any consequential amendments to the Order-in-Council giving effect to the amended sub-agreement.

## **IMPLEMENTATION AND FINANCING AGREEMENTS**

121. An Implementation Plan will accompany, but not form part of a sub-agreement or the Umbrella Agreement.