



Akwesasne Tekaiia'torehthà:ke
Kaianerénhsera (Akwesasne Court Law)

Kaiahnehronshera iehiontakwa Number: 2016-01

Mohawk Council Resolution: 2015/2016-#332
Date Enacted: February 12, 2016


Coming into Force: August 12, 2016

AKWESASNE MOHAWK COUNCIL RESOLUTION

File Reference: _____

MCR #: 2015/2016-#332



THE	MOHAWK COUNCIL OF AKWESASNE	THIS MEETING TOOK PLACE IN THE TERRITORY OF AKWESASNE WITH THE FOLLOWING MEMBERS OF THE AKWESASNE MOHAWK COUNCIL PRESIDING	
AGENCY	SOUTHERN ONTARIO DISTRICT		
PROVINCE	ONTARIO/QUEBEC	RECORDED VOTE	
PLACE	Admin. I Building	For: <u>8</u>	<input checked="" type="checkbox"/> Carried
DATE	<u>23</u> <u>February</u> <u>2016</u> <small>Day Month Year</small>	Against: <u>0</u>	<input type="checkbox"/> Denied
		Abstention: _____	

DO HEREBY RESOLVE:

Moved: Connie Lazore
Seconded: Karen Loran

WHEREAS, the Mohawks of Akwesasne have the existing and inherent right of self-determination, which includes the inherent jurisdiction over their lands, peoples and territory;

AND WHEREAS, the Mohawks of Akwesasne have the aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution of Canada, which include the inherent right of self-determination and jurisdiction over their lands, peoples and territory;

AND WHEREAS, the Mohawk Council of Akwesasne is the community government within the territory of Akwesasne and has inherent jurisdiction to make laws, regulations and policies to meet the needs and concerns of the Mohawks of Akwesasne;

AND WHEREAS, the Mohawk Council of Akwesasne intends to preserve the cultural, political and economic integrity of the Mohawk territory and community of Akwesasne;

AND WHEREAS, the Mohawks of Akwesasne have been in the development of a community-based justice system since the 1970's;

AND WHEREAS, the Akwesasne Mohawk Court is exercising its jurisdiction by ensuring the application and adjudication of the rule of law in Akwesasne;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2010/2011-#157 identifying a Working Task Group to develop a comprehensive draft Akwesasne Mohawk Court Law;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2014/2015-#122, accepting in principle the proposed Akwesasne Tekaiat'orehthà:ke Kaianeréhsera (Akwesasne Court Law) for Phase II for community consultation;

AND WHEREAS, community consultation was completed and the Mohawk Council of Akwesasne ratified Resolution 2015/2016-#264 accepting in principle a revised Akwesasne Tekaiat'orehthà:ke Kaianeréhsera (Akwesasne Court Law) for Phase IV Enactment of an Akwesasne Law;

AND WHEREAS, the Mohawk Council of Akwesasne determined by Resolution 2015/2016-#282 that the enactment method would be by way of a referendum vote to be held on February 6, 2016 in accordance with the General Referendum Regulations;

AND WHEREAS, the Chief Referendum Officer, in accordance with the General Referendum Regulation subsection 16.1, submitted to Council the statement of results of the referendum;


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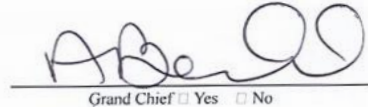
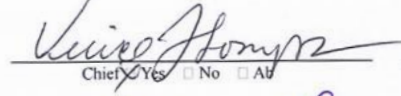
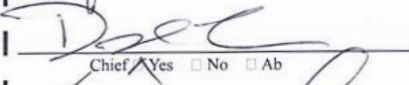
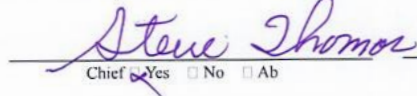
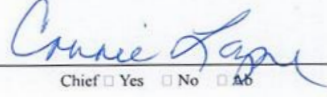
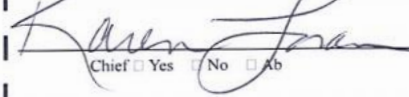
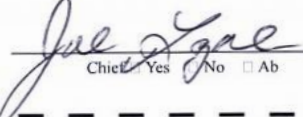
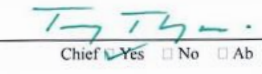
AND WHEREAS, the appeal period outlined in the General Referendum Regulation subsection 18.1 has expired and no appeal to the result of the referendum were filed;

THEREFORE BE IT RESOLVED, THAT the Mohawk Council of Akwesasne acknowledges the Chief Referendum Officers' statement of results of the General Referendum to enact the Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) as the final results;

FURTHER BE IT RESOLVED, THAT the attached Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) is hereby enacted and shall come into effect on August 12, 2016;

FINALLY BE IT RESOLVED, THAT the Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) shall be forwarded to the Kaiahneshonsera iehiontakwa to be registered as an Akwesasne Community Law.

carried

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Akwesasne Tekaiia'torehthà:ke Kaianerénhséra

(Akwesasne Court Law)

As approved by: MCR 2015/2016-#332

Dated February 12, 2016

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PREAMBLE

WHEREAS, the Kanien'kehá:ka (Mohawk) language, culture and heritage define our People;

AND WHEREAS, Akwesasne's distinct character within the Kanien'kehá:ka Nation is displayed in the community charter, Ohkwaho Kaionwi Ne Akwesasne (Akwesasne Wolf Belt);

AND WHEREAS, the Ohkwaho Kaionwi Ne Akwesasne (Akwesasne Wolf Belt) is a record kept by the Mohawk Nation Council of the people's commitment to protect, preserve and perpetuate their lands and resources; community, societies and culture; laws, traditions, and values; economy, health and spirituality, in a manner most appropriate to their life ways and inclusive of community collective and individual rights;

AND WHEREAS, the Mohawks of Akwesasne as Indigenous Peoples have the existing and inherent right of self-determination, which includes jurisdiction over their lands, peoples and resources;

AND WHEREAS, the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* recognizes the rights of Indigenous Peoples, including the right to establish its own justice forums;

AND WHEREAS, the Mohawks of Akwesasne have aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in section 35 of *Constitution Act 1982* of Canada which include the inherent right of self-government and jurisdiction over their lands, peoples and resources;

AND WHEREAS, the Mohawk Council of Akwesasne is the community government within Akwesasne Lands and has responsibility and jurisdiction to make laws, regulations, and policies to meet the collective needs of the Mohawks of Akwesasne;

AND WHEREAS, the Mohawks of Akwesasne recognize that indigenous legal institutions are required to meet its goal of a peaceful and harmonious society and to meet the collective needs of the Mohawks of Akwesasne;

AND WHEREAS, non-adversarial conflict resolution to restore relationship and community harmony has always been essential to community unity;

AND WHEREAS, the Mohawks of Akwesasne wish to exercise their right to self-determination and aboriginal right of self-government by enacting this Law setting out the jurisdiction, authority and responsibilities of the Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law);

THEREFORE BE IT RESOLVED, that the Mohawks of Akwesasne enact this Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law).

PURPOSE

The purpose of this Law is to set out the principles, powers and authorities of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court).

This Akwesasne Tekaiia'rorehthà:ke Kaianerénhsera (Akwesasne Court Law) reflects the values of the Mohawks of Akwesasne and the principles of Sken:nen (peace), Kasatstensera (strength) and Kanikonri:io (a good mind), respect, fairness, as well as natural justice.

This Law is enacted in exercise of the inherent right of self-government of the Mohawks of Akwesasne as recognized and affirmed by section 35 of the *Constitution Act 1982* and by the *United Nations Declaration on the Rights of Indigenous Peoples*.

Section 1.0 Title

This Law may be referred to as the “Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law)”.

Section 2.0 Definitions

2.1 In this Law:

“**Advocate**” means a person who may speak on behalf of a respondent and who is willing to follow the principles and values set out in this Law;

“**Akwesasne Lands**” means the lands, resources and waters over which the Mohawk Council of Akwesasne has Jurisdiction over, and for greater certainty includes:

- a) Kawehnoke (Cornwall Island) and any island within Ontario;
- b) Kanatakon (St. Regis Village);
- c) Tsi Snaihne (Chenail/Snye);
- d) Enskatsikahwenote (St. Regis Island) and any island within Quebec;
- e) Any future additions to Akwesasne Lands; and
- f) Any submerged lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to Akwesasne Lands that are part of Akwesasne by operation of law;

“**Akwesasne Law**” means a law or code enacted by the Mohawks of Akwesasne;

“**Akwesasne Legislative Enactment Regulation**” means the Regulation establishing the procedure for enactment and coming into force of Akwesasne Laws;

“**Akwesasne Mohawk Police Service Officer**” means a duly sworn officer of the Akwesasne Mohawk Police Service;

“**Akwesasne Justice Department**” means the administrative department under the Mohawk Council of Akwesasne;

“**Akwesasne Review Commission**” means the body established by Charter for purposes set out in the Charter which include the appointment and determination of remuneration for Ratiianerenhserakweniéhstha (Justice) and Teshatiiia'toréhtha (Appeal Justice), and the oversight, including the hearing of complaints against a Ratiianerenhserakweniéhstha (Justice) and Teshatiiia'toréhtha (Appeal Justice);

“Akwesasne Tekaiia'torehthà:ke (Akwesasne Court)” means “where they judge”, commonly known as the Akwesasne Court exercising authority under this Law;

[Pronounced: day ga yut doe lay ta gay]

“Arbitrator” means an independent third party;

“Benefit” means a direct or indirect monetary or non-monetary advantage, other than the prestige associated with the position of Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice);

“Charter” means the document approved by Resolution that establishes a Decision-Making Body and sets out its mandate, responsibilities and other matters related to its operation;

“Closely Related Person” means a person who is:

- a) an individual's spouse, child (including adopted children or those living with you as your child), brother, sister, parent, or grandparent (including in-laws) of a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice); or
- b) an associate or partner of a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) and the associate or partner holds 25% or more ownership, control or other financial involvement in the business;

“Council” means the Mohawk Council of Akwesasne as duly elected pursuant to the *Akwesasne Election Law*;

“Court Clerk” means the administrative employee of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) who issues, processes, enters Orders and performs other duties as established by Akwesasne Law or Regulation;

“Decision-Making Body” means a board, commission, tribunal or other body whose authority to make decisions is derived by delegated authority of Council under an Akwesasne Law or Charter;

“Enforcement Officer” means a person authorized by Council to enforce Akwesasne Laws;

“Jurisdiction” means having authority to make and enforce laws within the territory of Akwesasne;

“Member” means a person who is enrolled on the Akwesasne Membership Roll under the *Akwesasne Membership Code*, but does not include probationary members;

“Neh Kanikonriio Council” means the body within the Akwesasne Justice Department that determines alternative sentencing;

“Order” means a written judgment, decision or direction of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) made by the Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice);

“Ratiianerenhserakweniéhstha (Justice)” means “they are respecting the law”, commonly known as a Justice of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) appointed under this Law with authority and responsibility to hear and determine matters under section 5.0 of this Law and includes *Akwesasne Mohawk Justices* sitting at the time this Law comes into force and *Justices of the Peace* appointed under section 107 Indian Act;

[Pronounced: la dee ya nay lun zay la gway nyun sda]

“Raontiennakarátats (Prosecutor)” means “they speak for the people”, commonly known as a prosecutor who is the official retained by the Council to prosecute offenses brought before the Akwesasne Tekaia'torehthà:ke (Akwesasne Court);

[Pronounced: loon wa dee wun na ga la dutz]

“Regulation” means the guidelines made by Resolution for the purpose of setting out procedures and administrative matters for this Law;

“Resolution” means a Mohawk Council Resolution (MCR) formally adopted by Council pursuant to its governing authority;

“Restorative Justice” means an approach to remedying a harm done where a person takes responsibility for their actions, the appropriateness of the sanction is determined by the needs of the victim, the community, and the offender, and where the objective is to help restore relationships and harmony in the community;

“Skén:nen Order” means “peace order”, commonly known as an Order by a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) of the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) issued to an individual who has broken or has threatened to break the peace;

[Pronounced: sgun nun]

“Teshatiia'toréhtha (Appeal Justice)” means “they exam/judge the matters again”, commonly known as an appeal Justice of the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) appointed under this Law with authority and responsibility to hear and determine appeals from decisions and Orders of the Ratiianerenhserakweniéhstha (Justice); and

[Pronounced: day saw dee yut doe lay ta]

“Tсионkwéta Teshakowennákhwa (Duty Counsel)” means “he speaks for the person”, commonly known as duty counsel, the official hired by Council to provide advice to a person appearing before the Akwesasne Tekaia'torehthà:ke (Akwesasne Court).

[Pronounced: joon gway da day saw go wun nuh qua]

Section 3.0 Principles and Values

3.1 Principles – The Akwesasne Tekaia'torehthà:ke (Akwesasne Court) follows the principles of:

- a) Sken:nen (peace);
- b) Kasatstensera (strength); and
- c) Kanikonri:io (a good mind).

3.2 The Akwesasne Tekaia'torehthà:ke (Akwesasne Court), Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) shall be guided by the three pillars of justice in Akwesasne, namely:

- a) respect for life;
- b) respect for the person/being; and
- c) respect for property.

3.3 Values – The Akwesasne Tekaia'torehthà:ke (Akwesasne Court), Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) shall consider:

- a) that actions of individuals have an impact on the community as a whole and on the collective rights of the Mohawks of Akwesasne;
- b) the protection of the collective inherent rights and the interests of the Mohawks of Akwesasne;
- c) the importance of individuals to take responsibility for their actions;
- d) the goal of applying sanctions for improper acts is to:
 - i. restore balance in the community;
 - ii. maintain cultural values of the community; and
 - iii. in so far as reasonably possible to move away from confrontation and adversarial approaches in resolution of disputes or consideration of violations of Akwesasne Law;
- e) that every person is unique and possesses unique gifts and skills;
- f) the necessity to be impartial and independent;
- g) the need for individuals to be aware of charges against them in a timely manner, except in the case of emergency orders; and
- h) the support and encouragement of dispute resolution processes outlined in section 8.0 of this Law.

3.4 In considering sanctions and remedies and seeking to restore balance to the community, the Ratiianerenhserakweniéhstha (Justice) shall consider the talents of the individual before them and may make an Order that effectively and efficiently remedies the situation by having the individual participate in activities in the community that engage the individual, and reinforce their gifts and skills.

Section 4.0 General Provisions

4.1 Official Language of the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) – The official languages of the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) are Mohawk and English.

4.2 Documents filed in the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) shall be in the English language and can also be submitted in the Mohawk language.

4.3 Public Access - Subject to subsection 4.4, all hearings of the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) shall be open to the public.

4.4 A Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) may order the public to be excluded from a hearing where the possibility of serious harm or injury to any person justifies the exclusion of the public.

4.5 Duty to Record – Decisions and Orders made by the Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) may be made orally, however, the proceeding shall be recorded electronically.

4.6 All decisions or Orders issued by the presiding Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) shall be issued in writing with the reason(s) as soon as possible.

4.7 Regulations – Regulations for the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) may be established.

4.8 The Akwesasne Justice Department may establish policies and procedures for the administration of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) provided they are consistent with Akwesasne Laws and Regulations.

4.9 In the event of a conflict between a policy and procedure established by the Akwesasne Justice Department and an Akwesasne Law, the Akwesasne Law shall prevail to the extent of the conflict.

4.10 Interpretation:

- a) words in singular include the plural, and words in the plural include the singular;
- b) unless otherwise clear from the context, whenever “he” is used, it will include “she” and the use of “she” includes “he”;
- c) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;
- d) the expression “shall” is to be understood as mandatory and the expression “may” is to be understood as optional;
- e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”;
- f) a reference to an Akwesasne Law, Charter or Regulation includes any amendment, replacement or successor of that Akwesasne Law, Charter or Regulation;
- g) a “person”, in addition to a natural person, includes a corporation, partnership, agency, government or any agent, employee, successor or legal representative of such person to whom the context can apply according to law;
- h) a reference to the Akwesasne Mohawk Court, board, commission, body, or tribunal in this Law includes any successor body established by Akwesasne Law or Resolution carrying out all or some of the functions; and
- i) a reference in an Akwesasne Law, Charter or Regulation to a Mohawk Justice or a Justice of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) includes a Ratiianerenhserakweniéhstha (Justice) and where context requires Teshatiia'toréhtha (Appeal Justice).

4.11 Words in this Law referring to an officer, by name of office or otherwise, also apply to any person designated by the Council to act in the officer's place or to any person assigned or delegated to act in the officer's place under this Law.

4.12 Calculation of Time – 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;
- 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; and
- c) if there is no deadline identified, and unless otherwise provided in an Akwesasne Law or Regulation, the deadline for completion of acts is ten (10) days.

- 4.13 Age of Majority** – Unless otherwise provided in an Akwesasne Law or Regulation, the age of majority is eighteen (18) years old.
- 4.14 Immunity from Liability** – No action or proceeding for damages shall be instituted against a Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice), Raontiennakarátats (Prosecutor), Tsionkwéta Teshakowennákhwa (Duty Counsel), Court Clerk, Mohawk language interpreter, Enforcement Officer, peace officer, Akwesasne Mohawk Police Service Officer, or any person working as an employee or contractor with Council for any act done in good faith in the administration of that person's duties under this Law.
- 4.15 Raontiennakarátats (Prosecutor) and Tsionkwéta Teshakowennákhwa (Duty Counsel)** – The Akwesasne Review Commission shall appoint persons who satisfy the eligibility criteria in this Law to act as Raontiennakarátats (Prosecutor) and Tsionkwéta Teshakowennákhwa (Duty Counsel) in the Akwesasne Tekaia'torehthà:ke (Akwesasne Court).
- 4.16** In order to qualify for appointment as a Raontiennakarátats (Prosecutor) or Tsionkwéta Teshakowennákhwa (Duty Counsel) in the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) a person shall, as of the date of their appointment:
- a) be twenty five (25) years of age or older;
 - b) be a person of good standing in the community;
 - c) have related post-secondary education or work experience in the field of advocacy;
 - d) not be an elected member of any political body within the Mohawk Council of Akwesasne (MCA) or Saint Regis Mohawk Tribal Council (SRMT) or a representative under the Mohawk Nation Council of Chiefs (MNCC);
 - e) not be a member of any board, commission or tribunal in Akwesasne Lands; and
 - f) not have ever been convicted of:
 - i. an offense under the *Akwesasne Banishment Law*, the *Akwesasne Drug Law*, an Akwesasne Law related to the environment;
 - ii. of an indictable offense in Canada, except for those indicatable offenses pertaining to preservation of community or native rights; or
 - iii. a felony in the United States, except for those felonies pertaining to preservation of community or native rights;
 - g) must follow the principles and values set out within this Law.
- 4.17 Akwesasne Mohawk Police Service Officer Requirement** – An Akwesasne Mohawk Police Service Officer shall be in attendance at the Akwesasne Tekaia'torehthà:ke (Akwesasne Court) while Court is in session.
- 4.18 Court Clerk Requirement** – The Court Clerk shall assist the Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) while Court is in session and is responsible for administrative follow-up.
- 4.19 Advocate** – A respondent may request an Advocate to speak on their behalf, subject to approval by the Akwesasne Tekaia'torehthà:ke (Akwesasne Court).

Section 5.0 Jurisdiction

- 5.1 Recognition of Akwasasne Tekaiia'torehthà:ke (Akwesasne Court)** – The jurisdiction and authority of the Akwasasne Tekaiia'torehthà:ke (Akwesasne Court), as established by Resolution or Akwasasne Law, is recognized and continued under this Law.
- 5.2** The Akwasasne Tekaiia'torehthà:ke (Akwesasne Court) is recognized as a court of competent jurisdiction, and as such has jurisdiction to hear matters with respect to the *Constitution Act 1982, Canadian Charter of Rights and Freedoms* and the authority to make orders for remedies under section 24 of the *Canadian Charter of Rights and Freedoms*.
- 5.3 Jurisdiction and Legal Authority** - The Akwasasne Tekaiia'torehthà:ke (Akwesasne Court) has jurisdiction over:
- a) offences under Akwasasne Laws within Akwasasne Lands;
 - b) disputes of matters as set out in an Akwasasne Law;
 - c) contract disputes;
 - d) matters where parties to a dispute, agree to bring the dispute to the Akwasasne Tekaiia'torehthà:ke (Akwesasne Court);
 - e) the issuance of Orders as a remedy prescribed in Akwasasne Law;
 - f) the issuance of Skén:nen (Peace) Orders;
 - g) granting of equitable or nonmonetary remedies such as injunctions and specific performance Orders in relation to a matter arising out of an Akwasasne Law;
 - h) enforcement of negotiated settlements registered with the Akwasasne Tekaiia'torehthà:ke (Akwesasne Court);
 - i) enforcement of a final ruling by a Decision-Making Body, where the final ruling is registered with the Akwasasne Tekaiia'torehthà:ke (Akwesasne Court);
 - j) determination of the validity, interpretation or application of Akwasasne Laws, except where that responsibility has been expressly assigned to another Decision-Making Body in a particular Akwasasne Law or Charter;
 - k) reviews or appeals of decisions of a Decision-Making Body unless otherwise specified in a Akwasasne Law or in a Charter;
 - l) issuance of subpoenas compelling persons to appear before the Akwasasne Tekaiia'torehthà:ke (Akwesasne Court);
 - m) issuance of search warrants to enforce an Akwasasne Law by an Enforcement Officer, peace officer or Akwasasne Mohawk Police Service Officer; and
 - n) any other matter where jurisdiction is assigned to the Akwasasne Tekaiia'torehthà:ke (Akwesasne Court) under Akwasasne Law.
- 5.4** Without limiting the generality of subsections 5.2 and 5.3, in making its decisions the Akwasasne Tekaiia'torehthà:ke (Akwesasne Court) may rely on:
- a) Akwasasne Laws;
 - b) the *Criminal Code of Canada*;
 - c) the *Canadian Charter of Rights and Freedoms* ;
 - d) the common law;
 - e) laws of equity; and
 - f) other applicable laws.

- 5.5** Matters under subsections 5.2 and 5.3 shall be heard by a Ratiianerenhserakweniéhstha (Justice).
- 5.6** There shall be an appeal division of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) with the authority to hear appeals from Orders and decisions of the Ratiianerenhserakweniéhstha (Justice) in accordance with this Law.
- 5.7** Council recognizes the jurisdiction and authority granted to the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court), Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) in this Law, and except for responsibilities of Council described in this Law, Council members will not interfere with or become involved with the operations or decision making of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court), Raiianerenhserakweniéhstha (Justice), or Teshatiia'toréhtha (Appeal Justice).

Section 6.0 Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) Eligibility and Appointment

- 6.1 Eligibility** – In order to qualify for appointment as a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice), a person shall, as of the date of appointment:
- a) be enrolled as a member of a First Nation or of the Haudenosaunee Confederacy;
 - b) be twenty five (25) years of age or older;
 - c) have good character, credibility and reputation in their community;
 - d) have an adequate combination of education, work and life experience and possess an interest in the settling of disputes;
 - e) have successfully completed a training course approved by the Akwesasne Review Commission;
 - f) have knowledge of Mohawk culture and traditions;
 - g) not be an elected member of any political body within the Mohawk Council of Akwesasne (MCA) or Saint Regis Mohawk Tribal Council (SRMT) or a representative under the Mohawk Nation Council of Chiefs (MNCC);
 - h) not be an employee of the Mohawk Council of Akwesasne;
 - i) not be a member of any board, commission or tribunal in Akwesasne Lands;
 - j) not have ever been convicted of:
 - i. an offense under the *Akwesasne Banishment Law*, the *Akwesasne Drug Law*, an Akwesasne Law related to the environment;
 - ii. of an indictable offense in Canada, except for those indicatable offenses pertaining to preservation of community or native rights; or
 - iii. a felony in the United States, except for those felonies pertaining to preservation of community or native rights;
 - k) never have been removed from the position of Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice); and
 - l) be considered as “in good standing” with the *Akwesasne Good Standing Policy*.
- 6.2** New Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) shall be appointed from persons who meet the criteria set out in this Law as determined by the Akwesasne Review Commission in accordance with this Law and Regulations.

6.3 Term of Appointment:

- a) the term of appointment for the *Akwasasne Mohawk Justices* sitting at the time this Law comes into force, or *Justice of the Peace* appointed under section 107 of the Indian Act, shall be for a term of ten (10) years from the date this Law comes into force and may be reappointed for a further term of ten (10) years, if they qualify under subsection 6.1; and
- b) any new appointment of Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) under this Law shall hold office for an initial term of three (3) years and may be reappointed for a further term of ten (10) years, if they qualify under subsection 6.1.

6.4 Oath - Each Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice), before entering upon his/her duties shall swear to, or affirm and sign the oath of office in the form attached as "Schedule 'A'".

6.5 Remuneration - To support the objective of an independent and impartial judiciary of Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) in the Akwasasne Tekaia'torehthà:ke (Akwasasne Court), their remuneration shall be determined by the Akwasasne Review Commission.

6.6 Every five (5) years from the coming into force of this Law, the Akwasasne Review Commission shall review the remuneration for Ratiianerenhserakweniéhstha (Justices) and Teshatiia'toréhtha (Appeal Justices), requesting submissions from Council, Ratiianerenhserakweniéhstha (Justices), and Teshatiia'toréhtha (Appeal Justices), as to the appropriate remuneration.

6.7 After consideration of submissions from the Council, Ratiianerenhserakweniéhstha (Justices), and Teshatiia'toréhtha (Appeal Justices), the Akwasasne Review Commission shall set the remuneration for the Ratiianerenhserakweniéhstha (Justices) and Teshatiia'toréhtha (Appeal Justices) for the next five (5) year period.

6.8 Where there is no Akwasasne Review Commission to determine remuneration for Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice), the determination may be made by an Arbitrator.

Section 7.0 Conduct of the Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice)

7.1 Conflict of Interest – Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) shall not hear any matter before the Akwasasne Tekaia'torehthà:ke (Akwasasne Court) where they are in a conflict of interest, **unless all parties agree** that the matter can be heard by the Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) who has the conflict of interest.

7.2 A conflict of interest arises where a Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice), or Closely Related Person to those positions has a personal or financial interest.

7.3 Procedures for dealing with a matter where a conflict of interest arises shall be established by Regulation.

- 7.4 Confidentiality** – Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) shall not, either during their appointment or after their term of appointment has expired, release information received by them in their work with the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) or information relating to the deliberations or proceedings before the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court), unless it is:
- a) information that is public under Akwesasne Law or Regulation;
 - b) information that the Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) is required to release under any applicable law; or
 - c) information that the Akwesasne Review Commission may request in consideration of:
 - i. a complaint or application for removal of a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice); or
 - ii. the determination of whether the Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) has a conflict of interest.
- 7.5 Complaints** – The Akwesasne Review Commission has the responsibility and authority to receive, hear and dispose of complaints alleging misconduct or conflict or interest of a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice).
- 7.6** Any person may make a complaint alleging misconduct or conflict of interest of a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) by filing a complaint in writing in accordance with the Regulation.
- 7.7** After consideration of any submission filed by the complainant, Ratiianerenhserakweniéhstha (Justice), or Teshatiia'toréhtha (Appeal Justice), or after holding a hearing, the Akwesasne Review Commission may:
- a) dismiss the complaint; or
 - b) find the complaint is valid and impose one or more of the following remedies:
 - i. order the person to apologize to the complainant or to any other person;
 - ii. order that the person take such actions or participate in processes consistent with the principles of Restorative Justice;
 - iii. order that the person take specific measures, such as receive training, counseling or treatment in order to continue in their office;
 - iv. where there has been an improper financial Benefit to a Justice, order the person to repay that amount to Council;
 - v. suspend the person without pay for a period of no longer than two (2) months;
 - vi. reprimand the person; or
 - vii. recommend to Council that the person be removed from office.
- 7.8** The Akwesasne Review Commission must provide written notice of their decision together with reasons to the complainant, the person whose conduct was challenged, the Akwesasne Justice Department and Council.
- 7.9** The Akwesasne Review Commission may establish policies and procedures with respect to the consideration of complaints of misconduct, including rules for the holding of hearings, provided the policies or procedures are consistent with this Law, the Akwesasne Review Commission Charter, Akwesasne Laws and Regulations.
- 7.10** An Akwesasne Review Commission decision on a complaint or remedy is final and not subject to appeal.

- 7.11 Vacancies** – The position of a Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) may become vacant when he or she:
- a) dies;
 - b) resigns from the position of Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice);
 - c) has their term of office expire and they have not been reappointed under this Law;
 - d) no longer meets the eligibility criteria for the position of Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice);
 - e) has been unable to perform the functions of his or her position for more than six (6) months due to illness or other incapacity;
 - f) has been removed from the position in accordance with this Law; or
 - g) has been found to have sworn a false declaration as to his or her eligibility.
- 7.12** A Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice), convicted of an offense listed in subsection 6.1(j), who appeals their conviction shall:
- a) not sit during any period of appeal; and
 - b) if the conviction is upheld on appeal, is subject to removal.
- 7.13** Where there is a vacancy a new Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) shall be appointed in accordance with the procedures set out in a Regulation under this Akwesasne Law.

Section 8.0 Dispute Resolution Process (Family or Civil Matters)

- 8.1** Council and the Mohawk Nation Council or Saint Regis Mohawk Tribal Council may enter into protocols or agreements to facilitate the use of the Mohawk Nation Council or Saint Regis Mohawk Tribal Court in dispute resolution.
- 8.2** Once a protocol or agreement is in place, parties to a family or civil matter must agree to have the issue determined through the dispute resolution process established with the Mohawk Nation Council or Saint Regis Mohawk Tribal Court.
- 8.3** Any determination by the Mohawk Nation Council or Saint Regis Mohawk Tribal Court through an established protocol or agreement, or negotiated settlement developed through a dispute resolution process, may be registered with the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) by either party to the proceedings.
- 8.4** Any determination, negotiated settlement or agreement registered with the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) is enforceable on Akwesasne Lands.

Section 9.0 Remedies

- 9.1 Sanctions** – In considering sanctions and making Orders in relation to violations of Akwesasne Law, the Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) shall be mindful of the objectives of Restorative Justice and the principles of remediation, responsibility, restoration and restitution.
- 9.2** Where a person charged with the violation of an Akwesasne Law accepts responsibility for their actions, the Ratiianerenhserakweniéhstha (Justice) may refer the matter to the Neh Kanikonriio Council for recommendations as to remedies.

9.3 Where there is a conviction for a violation of an Akwesasne Law or acceptance of responsibility by a person under subsection 9.2, in addition to any other remedy or penalty set out in that Akwesasne Law, a Ratiianerenhserakweniéhstha (Justice) has discretion, for community balance to make one or more of the following Orders:

- a) prohibiting the continuation or repetition of the offence by the person;
- b) revoking or suspending any permit or other document issued under Akwesasne Law in relation to the contravention;
- c) requiring treatment through holistic services, including counseling services;
- d) requiring the demolition or removal of any structure erected in contravention of Akwesasne Law;
- e) requiring the quarantine or destruction of any animal in respect of which the contravention was committed;
- f) requiring forfeiture or disposition of goods or chattels by means of which or in relation to which the offence was committed;
- g) requiring the convicted person perform community service;
- h) requiring the convicted person remedy or pay for remediation of damage;
- i) directing publication of the facts of a violation of Akwesasne Law;
- j) enforcing negotiated settlements registered in the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court);
- k) enforcing decisions of a Decision-Making Body registered in the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court);
- l) requiring a person before the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) to pay court costs;
- m) requiring a person to pay all or some of a party's legal costs;
- n) payments to funds created for the benefit of the Akwesasne community;
- o) requiring a person to make restitution;
- p) specific performance or injunctions;
- q) imposing any other Order consistent with the principles of Restorative Justice;
- r) conditional sentencing for the purposes of reintegration; or
- s) impose a fine as set out in an Akwesasne Law, or in the absence of a specific amount for a fine in Akwesasne Law, comparable to offences under Federal Law.

9.4 Violation of Environmental Laws – In addition to any fine or Order under subsection 9.3, fines and Orders for a violation of an Akwesasne Law in relation to environmental protection may include Orders directing:

- a) correction of the environmental damage;
- b) payment of a performance bond;
- c) compensation for economic loss;
- d) suspension of work on the project;
- e) the enforcement of negotiated settlements;
- f) payments to funds created to restore damaged environment or take other corrective measures, including clean-up or disposal of toxic or other substances; or
- g) other appropriate remedies in situations of violation.

- 9.5** A fine prescribed for a violation of an Akwesasne Law in relation to environmental protection may exceed the limits in subsection 9.3 as long as it is not greater than a fine that may be imposed upon conviction for a comparable offence under federal environmental legislation.
- 9.6** Where a violation of an Akwesasne Law in relation to environmental protection is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which it is committed or continued.
- 9.7 Party in Default** – Where a named party in an application filed in the Akwesasne Court fails to reply or respond within the prescribed time, the Court may note the respondent or defendant in default.
- 9.8** A party who has been noted in default is deemed to admit the truth of all allegations of fact made in the application.
- 9.9** Any step in the action that requires the consent of a party may be taken without the consent of the party in default.
- 9.10 Contempt of Court** – The Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) may find a person to be in contempt of court, if satisfied that:
- a) the person is engaging in conduct that interferes with the administration of justice after being warned by the Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) that the conduct is considered inappropriate;
 - b) the person demonstrates a disregard for the rules of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) or interrupts proceedings by disorderly behavior or disrespectful language, while court is in session or so near as to disturb the proceedings or to impair the respect due to the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court); or
 - c) the person fails to obey an Order.
- 9.11** Where a person is found in contempt of court for failing to obey an Order, the Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice) may make additional Orders.
- 9.12** Upon completion of any appeals, a person who fails to comply with an Order of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) may be subject to banishment under the *Akwesasne Banishment Law*.
- 9.13 Disposition of Fines** - Every fine Ordered by a Ratiianerenhserakweniéhstha (Justice), or Teshatiia'toréhtha (Appeal Justice) under Akwesasne Law or other applicable law, shall be paid to the Mohawk Council of Akwesasne.

Section 10.0 Appeals

- 10.1 Appeals from the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court)** – Unless otherwise provided for in an Akwesasne Law, appeals from the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) shall be heard by a panel of three sitting as the appellate division of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court).

- 10.2** The panel identified under subsection 10.1 shall consist of either:
- a) three (3) Teshatiia'toréhtha (Appeal Justices);
 - b) one (1) Teshatiia'toréhtha (Appeal Justice) and two (2) members of a Decision-Making Body not involved in the matter; or
 - c) where there are not enough Teshatiia'toréhtha (Appeal Justices) or members of a Decision-Making Body eligible to hear an appeal, by a Justice from an outside court for that appeal.
- 10.3** Until there is an appellate division established by Regulation in the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court), appeals shall be heard by a Justice from an outside court.
- 10.4** A Justice of an outside court hearing a matter under this Law shall have all the powers of a Teshatiia'toréhtha (Appeal Justice) and is subject to the same duties and responsibilities as a Teshatiia'toréhtha (Appeal Justice).
- 10.5** **Grounds For An Appeal** – An appeal from a decision in a civil matter, family matter or from a decision by a Decision-making Body may be filed on the grounds of error of law.
- 10.6** Where parties have agreed to proceed with a hearing under subsection 7.1, conflict of interest or bias of the Ratiianerenhserakweniéhstha (Justice) or Teshatiia'toréhtha (Appeal Justice), as applicable, shall not constitute grounds for an appeal.
- 10.7** For any matter relating to Akwesasne Law, all applicable procedures, reviews and appeals under this Law or any other Akwesasne Law or Regulation must be exhausted before any application can be made to an external court, tribunal, commission or other body.

Section 11.0 **Enforcement and Enforceability**

- 11.1** Decisions and Orders of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) are enforceable throughout Akwesasne Lands by an Enforcement Officer.
- 11.2** Decisions and Orders of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) may be enforced off Akwesasne Lands by police officers, civil officials, courts or other agencies in that jurisdiction.
- 11.3** Seizures made under this Law or any other Akwesasne Law by an Enforcement Officer, peace officer or Akwesasne Mohawk Police Service Officer are carried out on behalf of the Mohawks of Akwesasne.
- 11.4** No person shall obstruct, interfere or hinder an Enforcement Officer, peace officer or Akwesasne Mohawk Police Service Officer in carrying out their duties or mislead them, make false declarations or refuse to disclose information to an Enforcement Officer, peace officer or Akwesasne Mohawk Police Service Officer.
- 11.5** Enforcement Officers have authority to:
- a) enforce Orders and warrants;
 - b) participate in seizure;
 - c) participate in recovery and sale of property; and
 - d) perform courtroom and other related duties.

Section 12.0 **Coming into Force**

12.1 This Law must be enacted and come into force in accordance with the Akwesasne Legislative Enactment Regulation.

Section 13.0 **Amendments**

13.1 Any or all amendments to this Law must be in accordance with the Akwesasne Legislative Enactment Regulation.

Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) Schedule 'A'
February 12, 2016

Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law)

Schedule 'A'

OATH

for the Ratiianerenhsarakweniéhstha (Justice)

I, _____, hereby accept my appointment to the position of Ratiianerenhsarakweniéhstha (Justice) for the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) and agree to maintain confidentiality during my term.

1. In the capacity of Ratiianerenhsarakweniéhstha (Justice) I will do my utmost to serve the Members of Akwesasne with impartiality, integrity, honesty and respect.
2. In the performance of my duties, I will adhere to the provisions of the Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) and will bring forth any changes in my circumstance that may impact my continued eligibility.
3. I solemnly swear/affirm that I will diligently perform my duties as required by the Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) and my actions will not bring disgrace to this position or to the community of Akwesasne.

SWORN/AFFIRMED BEFORE ME

At _____

on this _____ day of _____, 20_____.

Justice of the Mohawk Court, Commissioner
for Oaths, or Notary Public

Signature

Position

Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) Schedule 'A'
February 12, 2016

Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law)

Schedule 'A'

OATH

for the Teshatiia'toréhtha (Appeal Justice)

I, _____, hereby accept my appointment to the position of Teshatiia'toréhtha (Appeal Justice) for the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) and agree to maintain confidentiality during my term.

1. In the capacity of Teshatiia'toréhtha (Appeal Justice) I will do my utmost to serve the Members of Akwesasne with impartiality, integrity, honesty and respect.
2. In the performance of my duties, I will adhere to the provisions of the Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) and will bring forth any changes in my circumstance that may impact my continued eligibility.
3. I solemnly swear/affirm that I will diligently perform my duties as required by the Akwesasne Tekaiia'torehthà:ke Kaianerénhsera (Akwesasne Court Law) and my actions will not bring disgrace to this position or to the community of Akwesasne.

SWORN/AFFIRMED BEFORE ME

At _____

on this _____ day of

_____, 20_____.

Justice of the Mohawk Court, Commissioner
for _____ Oaths, _____ or

Signature

Position
Notary _____ Public

This document has been formatted for public distribution. For a certified copy of the original version of the Akwesasne Law, contact the Kaiahnehronshera iehiontakwa – Akwesasne Law Registry Registrar located at the Akwesasne Justice Department