

Mohawk Council of Akwesasne – Akwesasne Justice Department

Training Curriculum

For the Justices of the Akwesasne Mohawk Court

Contents

Training Summary: 1

Volume 1: Training Material for Akwesasne Justices of the Mohawk Court..... 1

Chapter 1: Introduction 1

Chapter 2: Ethics 1

Chapter 3: The Courtroom Process 2

Chapter 4: Jurisdictional Issues..... 2

Chapter 5: Introduction to the Canadian Charter of Rights and Freedoms 2

Chapter 6: Legal Issues Pertaining to Aboriginal Peoples 3

Volume II: Training Material for Akwesasne Justices of the Mohawk Court 4

Chapter 7: Offences and Defenses 4

Chapter 8: Criminal Procedure 4

Chapter 9: Evidence 5

Chapter 10: Sentencing..... 5

Chapter 11: Youth 5

Chapter 12: Essentials of Writing a Judgment 5

Training Summary:

The following outline provides an overview of the curriculum for Akwesasne Justice of the Mohawk Court, which was prepared by Anjali Choksi of the firm Dionne Schulze and Bernard Grenier, Michele Meleras and Isabel Schurman of the firm Schurman Longo Grenier. This training is intended to provide a comprehensive overview of the knowledge needed in order to discharge all of the Akwesasne Justice responsibilities and is broken down into two volumes.

--

Volume 1: Training Material for Justices of the Akwesasne Mohawk Court

Resources for Volume 1:

- Resurgent Justice: Rebuilding the Mohawk Justice System, A Case Study For The Mohawk Council of Akwesasne – Native Nations Institute for Leadership, Management and Policy
- Code of Judicial Conduct for Mohawk Court Judges
- Constitution Act, 1867
- Constitution Act, 1982
- Indian Act (Canada)

Chapter 1: Introduction

1. The Canadian Legal System
2. Akwesasne Mohawk Legal System
3. The Doctrine of Case Precedent
4. The Canadian Courts
5. The Powers, or Jurisdiction, of a Justice
6. The Types of Cases Focused On:
 - a. Civil
 - b. Criminal
7. The Adversarial Court Process
8. Alternative Dispute Measures

Chapter 2: Ethics

1. *Code of Judicial Conduct for Mohawk Court Judges* – Preface:

This Code sets standard of Judicial Conduct for Indian Court Judges. The purpose of the Code is to encourage a spirit of fairness toward person brought before the Mohawk Court and to ensure fundamental fairness and due process in court proceedings.

2. Honesty and Independence of Indian Judiciary
3. Impropriety and the Appearance of Impropriety
4. Diligence and Impartiality
5. Improvement of the Legal System
6. Extra-Judicial Activities

Chapter 3: The Courtroom Process

1. Who Participates in the Courtroom Process?
 - a. The Lawyers
 - i. The Defense Lawyer
 - ii. Crown Counsel
 - b. Other Participants in the Courtroom Process
 - i. The Native Courtworker
 - ii. The Court Clerk
 - iii. The Liaison Officer
 - iv. The Probation Officer
 - v. The Courtroom Interpreter
2. Elements Required for a Fair and Impartial Hearing
 - a. The Right to Remain Silent
 - b. The Right to Counsel
 - c. The Judge

Chapter 4: Jurisdictional Issues

1. Territorial Jurisdiction
2. Subject-Matter Jurisdiction
3. Superintending and Reviewing Powers of the Outside Courts

Chapter 5: Introduction to the Canadian Charter of Rights and Freedoms

1. Individual Versus Collective Rights
 - a. Section 1 of the Charter
 - b. Section 33 of the Charter
 - c. Section 25 of the Charter
2. Plain Language Version of the Charter
 - a. Section 1 – Guarantee of Rights and Freedoms
 - b. Section 2 – Fundamental Freedoms
 - c. Sections 3, 4, and 5 – Democratic Rights
 - d. Section 6 – Mobility Rights
 - e. Legal Rights
 - i. Section 7 – 33

Chapter 6: Legal Issues Pertaining to Aboriginal Peoples

1. Introduction to Legal Issues Pertaining to Aboriginal Peoples
2. Subsection 91(24) of the Constitution Act, 1867
3. Who Are the Aboriginal Peoples of Canada in Canadian Law?
4. Large and Liberal Interpretation
5. The Burden of Proof in Aboriginal and Treaty Rights Cases
6. What Does the Word “Treat” Mean?
7. What Does the Word “Existing” Mean in Subsection 35(1)?
8. Extinguishment of Aboriginal and Treaty Rights
9. The Scope of Aboriginal Rights Protected by Section 35
10. Section 25 of the Constitution Act, 1982
11. The Indian Act
12. Akwesasne Banishment Law
13. Matrimonial Property Law

--

Volume II: Training Material for Justices of the Akwesasne Mohawk Court

Resources for Volume II:

- Indian Act (Canada)
- Criminal Code (Canada)

Chapter 7: Offences and Defenses

1. Offences
 - a. True Criminal Offences
 - b. Actus Reus
 - c. Mens Rea
 - d. Burden of Proof
 - e. Reverse Onus Clauses
 - f. Strict Liability Offences
 - g. Absolute Liability Offences
 - h. Offences Under the Indian Act and Criminal Code
 - i. Cruelty to Animals
 - ii. Common Assault
 - iii. Breaking and Entering
 - iv. Vagrancy
 - v. Parties to Offences
 1. Party to Offence
 2. Common Intention
 3. Counselling
 4. Accessory After the Fact
 5. Attempts
 6. Conspiracy
2. Defenses
 - a. Justification and Excuses as Defenses
 - b. Alibi
 - c. Mental Disorder
 - d. Mistake of Fact
 - e. Self Defense

Chapter 8: Criminal Procedure

1. Information
2. Judicial Interim Release
3. Peace Bonds
4. Akwesasne Diversion Program

5. Search Warrants
 - a. Other Types of Searches
 - b. Searches under the Controlled Drugs and Substances Act
 - c. Search and Seizure and the Charter
6. Telewarrants
7. Bench Warrants

Chapter 9: Evidence

1. Introduction
2. Hearsay
3. Relevance
4. Admissibility
5. Competence and Compellability
6. Examination of Witnesses
7. Credibility
8. Similar Fact Evidence
9. Corroboration
10. Burdens of Proof
11. Conclusion

Chapter 10: Sentencing

1. Objectives of Sentencing (guest speaker: Louise Mailhot)
2. Factors to Consider in Sentencing
 - a. Mitigating Factors
 - b. Aggravating Factors
3. Types of Sentences
 - a. Absolute or Conditional Discharge
 - b. Suspended Sentence
 - c. Fine
 - d. Probation Order
 - e. Community Service
 - f. Imprisonment
 - g. Conditional Sentence of Imprisonment
4. Credit for Time Served

Chapter 11: Youth

1. Diversion Program

Chapter 12: Essentials of Writing a Judgment