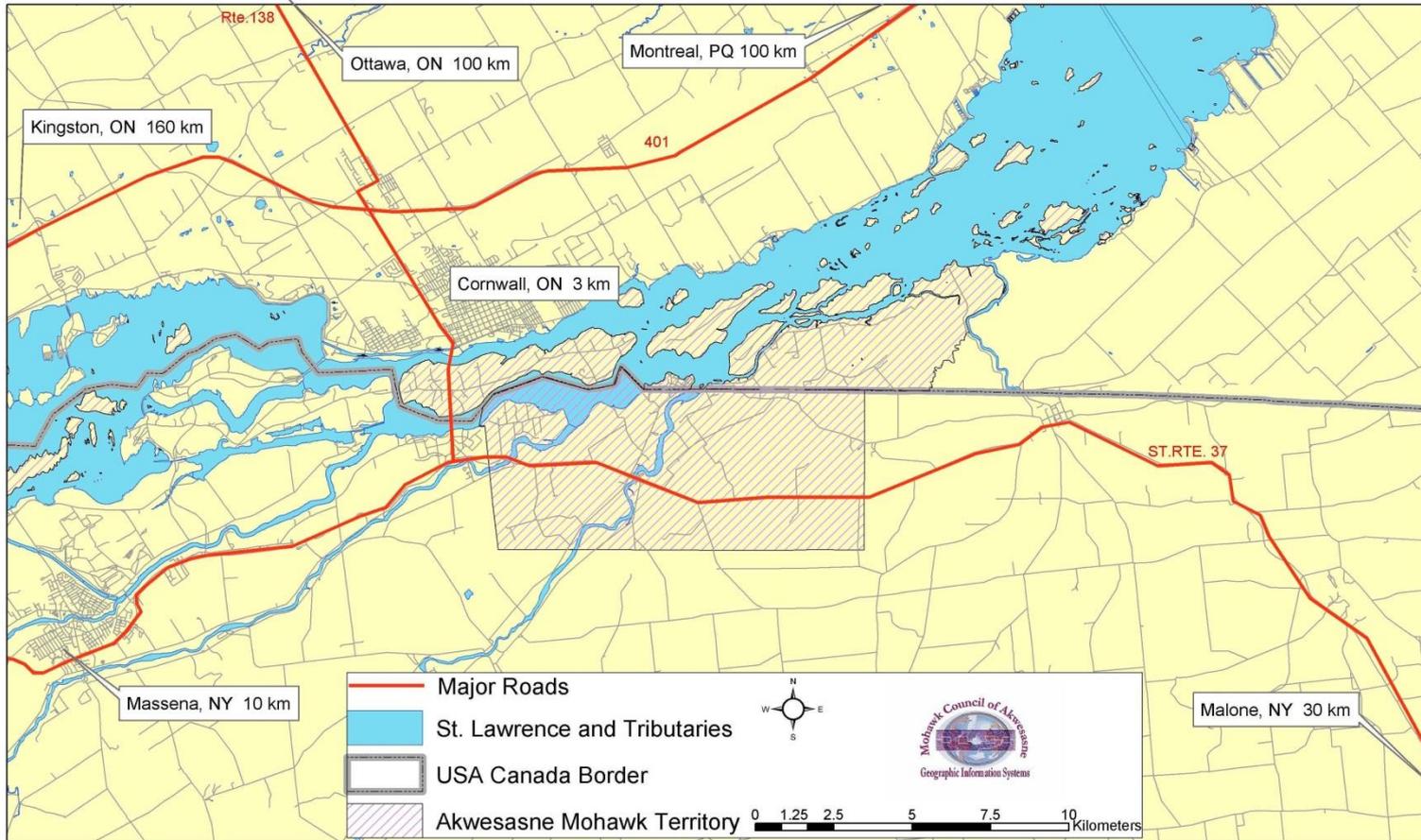


MOHAWK COUNCIL OF AKWESASNE Akwesasne Justice Department

Administration of Justice

Map of Akwesasne



The Royal Commission on Aboriginal Peoples (1996)



1. Current Justice System a Failure for Aboriginal People
2. Current Justice System Structurally Unsound for Aboriginal Peoples
3. Time for Major Reform is Now
4. No Serious Jurisdictional Impediments to Reform
5. Justice and Gender [Inequality]
6. Separate Aboriginal Justice Systems
7. Reserve-Only Reforms Not Appropriate
8. Current Initiatives Deserve to be Documented and Analyzed
7. Process of Reform - Consensual



RCAP



“Aboriginal justice initiatives have commenced in different communities across Canada. It would be unrealistic and indeed counter productive to expense these community based initiatives to give way to a single Aboriginal justice system...

...It is unlikely that a single community-based initiative would extend across Canada to become a single system Aboriginal justice system...”

Report from the UN Special Rappateur

- James Anaya, the UN Rappateur on the rights of indigenous peoples found that “human rights problems faced by indigenous peoples in Canada have reached crisis proportions.
- ...Indigenous leaders have expressed concern that progress toward this goal [reconciliation] has been undermined by actions of the government that limit or ignore the input of indigenous governments and representatives”

Source: APTN National News May 12, 2014

We can make a change, right now...



United Nations Declaration on the Rights of Indigenous Peoples

ARTICLE 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

ARTICLE 34: Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

ARTICLE 35: Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

ARTICLE 40: Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of indigenous peoples concerned and international human rights.



Truth and Reconciliation Commission of Canada

Strategies for Change

“Any strategy aimed at reducing Aboriginal offending and victimization must also include recognition of the rights of Aboriginal communities to develop their own justice system as part of a larger commitment to Aboriginal self-determination and self-government.”

Call to Action 42. “We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982*, and the *United Nations Declaration on the Rights of Indigenous Peoples*, endorsed by Canada in November 2012.”

MOHAWK COUNCIL OF AKWESASNE

MISSION STATEMENT: *To provide consistent quality services that will enhance the quality of life for all Akwesasronon today, while protecting our rights and preserving our resources for the next seven generations.*

VISION STATEMENT: Sustaining our inherent rights, facing challenges together to build a strong and healthy future.

The Akwesasne Justice Department strives to provide a comprehensive Justice System for the people of Akwesasne which is equitable, fair and respectful of individual rights and is also respectful of our Culture and Heritage as Mohawks.

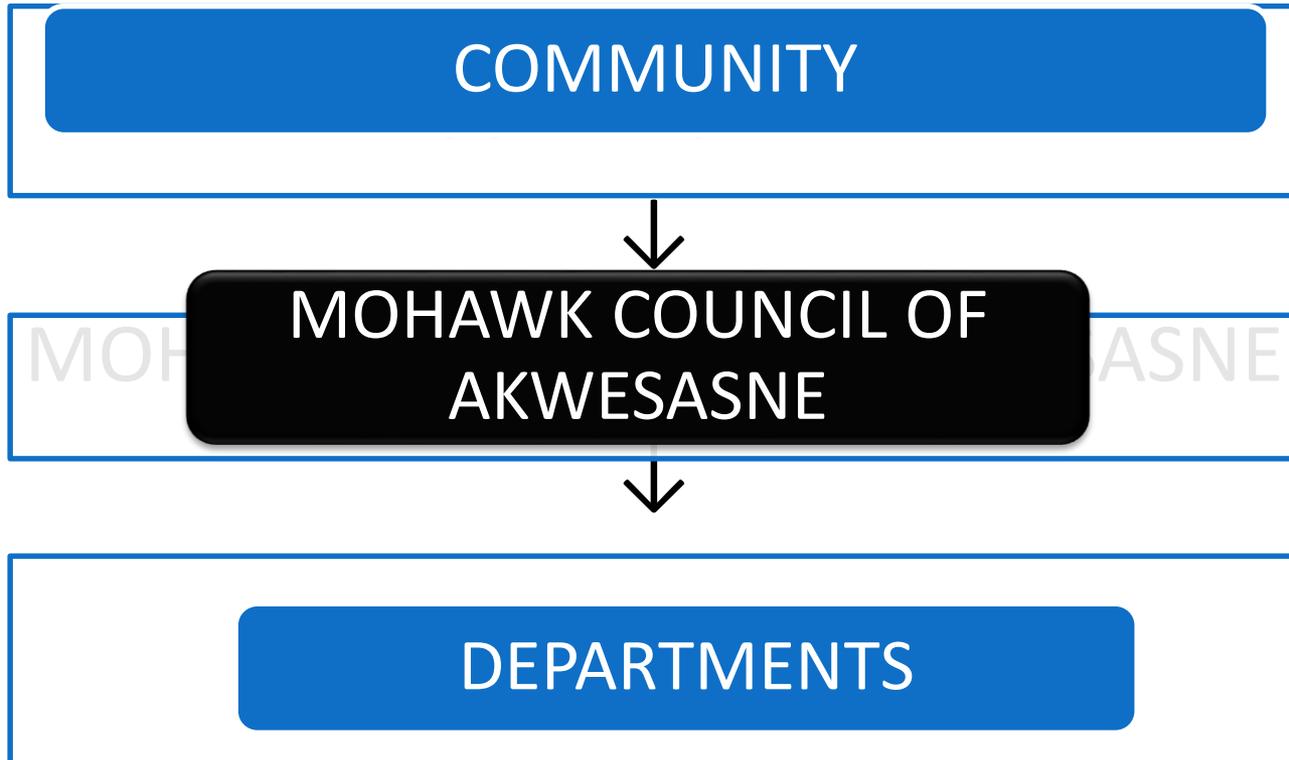
An Aboriginal Justice System at Akwesasne

LEGISLATION

ADJUDICATION

ENFORCEMENT

STRUCTURE AT AKWESASNE



MOHAWK COUNCIL OF AKWESASNE

Office of the Grand Chief

12 District Chiefs

Governmental Support Manager

- Aboriginal Rights and Research Office
 - Nation Building Program
 - Communications Office

DEPARTMENTS

EXECUTIVE SERVICES

AKWESASNE JUSTICE DEPARTMENT

AKWESASNE MOHAWK BOARD OF
EDUCATION

AKWESASNE MOHAWK POLICE SERVICES

DEPARTMENT OF COMMUNITY AND SOCIAL
SERVICES

DEPARTMENT OF HEALTH

HOUSING

DEPARTMENT OF TECHNICAL SERVICES

TEHOTIENAWAKON

EXECUTIVE SERVICES

Executive Director + 2 Project Officers

- Finance – Comptroller
 - Human Resources
- Information Services (Computers)
 - Communication Unit
 - Office of Vital Statistics
- Iohahiio (Adult Education)

Akwesasne Justice Department

- Akwesasne Court
- Akwesasne Community Justice Program
 - Legal Services
 - Legislative Services
 - Probation – Quebec and Ontario
- Parole (Section 84 Early Release CCA)
 - Conservation Program
 - Compliance Program
 - Native Inmate Liaison Services

ADMINISTRATION OF JUSTICE ⁽⁵⁾

- ❖ The foundation of any society rests on its system of justice. Clearly, the Canadian justice system has failed to meet the needs of Aboriginal peoples.
- ❖ Self-government means not only the right to make your own laws, but the ability to enforce, interpret and adjudicate issues based on those laws. Most fundamentally however, it involves the right to have a judicial system reflect your values.

Underlying Principles of Justice Systems

Common themes

- Societal order
- Standards of conduct
- Protection of members
- Provide stability/certainty

Unique to Akwesasne:

- Kinship/Clan system
- Collective Rights
- Principles of Peace, Strength and the Good Mind
- Non-adversarial
- Restoration or removal

VALUES

Principles of Ka'nikonriio (Good Mind)

- Peace
- Respect
- Trust
- Openness
- Friendship

In the Spirit of the Two Row Wampum

- Negotiate in good faith on a government to government basis

In the Spirit of the Royal Proclamation (1763)

- Protect the inherent right of all (Akwesasronon)

- Restore traditional values;
- Preserve, protect and advance our language
- Protection of lands and resources for future generations
- Retention of community values such as the importance of the environment and restoration of peace and the person.
- Protect and exercise the jurisdiction of the Mohawks of Akwesasne
- Akwesasne collective rights take precedence over individual rights
- Protect the integrity of previous MCA (past Council's) decisions
- Maintain transparency and accountability to the community of Akwesasne

IDENTIFIED ISSUES

- ❖ The Indian Act s 81 allows the council of a band to make by-laws.
- ❖ The Indian Act by-laws and their approval have not kept up with the demands of Mohawk society.
- ❖ Akwesasne face problems accessing a fair judicial process in Canadian Courts. Those Federal and provincial courts are time-consuming and costly, to name a few.
- ❖ Akwesasne Mohawk cultural values are not considered in a “Western-European” judicial system.

The Indian Reserve Traffic Regulation (Can. Reg. 959) made under the Indian Act guilty of an offense shall be liable to a penalty of not less than \$1.00 and not more than \$50.00. This is not an effective deterrent in preventing further traffic offenses.

Over 150 outstanding land and estate files have been created by the application of inappropriate INAC policies and decisions.

In response, the Mohawk Council of Akwesasne is working on Legislative development and implementation of decision-making bodies which protects the safety of the community.

AKWESASNE JUSTICE DEPARTMENT

LEGISLATIVE DEVELOPMENT

PRINCIPLES OF LEGISLATIVE DEVELOPMENT

- ❖ The Wolf Belt (Charter)
- ❖ Traditional Law Principles
- ❖ United Nations Declaration on the Rights of Indigenous Peoples
- ❖ Royal Proclamation of 1763
- ❖ Constitution Act, 1867
- ❖ The Constitutional Act 1982 Section 35
- ❖ Canadian Charter of Rights and Freedoms s. 25 and 35
- ❖ Indian Act s.81

- Defined by Territory
- Treaty Rights
- Collective Rights are foremost
- Protection of all persons
- Culturally-based principles
- Familial Relationship
- Trust
- Fiduciary Responsibility
- Principles of Natural Justice
- Standardized law enactment

Akwesasne Law Considerations

***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**, 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;*

Is the Akwesasne Law consistent with Community Values?

Does the Akwesasne Law ensure continuity with past relationships, rights, treaties?

Does the Akwesasne Law reflect self-determination and jurisdiction?

Does the Akwesasne Law ensure past principles are preserved?

Does the Akwesasne Law enhance the Community of Akwesasne?

Law Enactment Procedural Regulation (MCR 2015/2016- #261A December 22 2015)



FIVE PHASES

- I. Law Development
- II. Acceptance in Principle
- III. Community Consultation
- IV. Enactment of the Law
- V. Ratification / Rejection

PHASE I-Law Development

- MCR to establish law or by a petition of Members
- A Notice is sent to community members for comment
- MCR establishes a Working Task Group ⁽¹⁾ meets to draft the law
- A Legal Review is done and given back to the Working Task Group to approve of the recommended changes
- The “Draft for Phase II” is presented to Council for presentation to the community or sent back by Council for redrafting to the Working Task Group.

PHASE II- Acceptance in Principle

- A Council Meeting, Council will accept in principle or reject the law.
- If rejected, this is the end of the draft Law
- If accepted, the draft law moves forward to Phase III – Community consultation

PHASE III- Community Consultation

- Public information meetings are scheduled in the three Districts.
- Comments are tabulated for Council's consideration and incorporated by the WTG
- The new draft is submitted for legal review
- The WTG incorporates and prepares a report of changes (if any) and proposes the Law as marked "Phase III-Post Consultation and submits to Council to accept for Phase IV.

PHASE IV-Enactment of Law

- Publication of a full text of the proposed Akwesasne Law is posted 20 days before the meeting in the newspaper and on the website
- No revisions are allowed and the final version is marked “Phase IV for Enactment”
- Council determines to have a community vote by secret ballot or by referendum
- Date is set and vote takes place overseen by the Chief Electoral Officer and/or Deputy E.O.
- If passed – law is entered into the Akwesasne Law Registry.

PHASE V-Ratification and Rejection of an Akwesasne Law

- A MCR is passed accepting the results of the vote (Failure of Council members not signing does not invalidate the results).
- Enactment of the law will come into effect on the date of the vote or as per the resolution.
- Public Notice of the voting results are relayed to the community within 7 days.
- A full text of the ratified law is published in the local newspaper and is posted on the MCA website: www.akwesasne.ca/laws.
- Three originals of the ratified law and the original resolution is entered into the Akwesasne Law Registry.

Amendment and Repeal of an Akwesasne Law

- Amendments or repeals are by an MCR or by a community petition.
- Follows the same process as a new proposed Law.

AKWESASNE LAWS

CURRENT DRAFT (Amendments) LAWS

- ❖ Conservation Law amendments
- ❖ Water Law
- ❖ Financial Administration Law
- ❖ Landlord Tenant Act
- ❖ Referendum Law
- ❖ Akwesasne Election Law
- ❖ Governance Code
- ❖ Akwesasne Education Law

- *Akwesasne Election Law (2005)*
- *Akwesasne Membership Code (1987)*
- *Akwesasne Tekaia'torehtha:ke Kaianerenhsera/Court Law (2016)*
- *Iatathróna Raotiientáhtsera/Couples Property Law (2013)*
- *By-Law 10 A & 10 B Traffic Law (1973)*
- *Akwesasne Oien:kwa Kaianerensera/Tobacco Law (2016)*
- *Akwesasne Wildlife Conservation Law (1989)*
- *Akwesasne Banishment Law (1999)*
- *Akwesasne Curfew By-Law (2003)*
- *Akwesasne Residency Law (1997)*
- *Ethical Conduct Law (1997)*
- *Itinerant Vendors Law (1989)*
- *By-Law Respecting the Sale of Tax Exempt Cigarettes (1988)*
- *Waterworks System By-law (1964)*
- *ATV By-law (1986)*
- *Intoxicants By-law (1986)*
- *Control of Dogs (1997)*

An Aboriginal Justice System

LEGISLATIVE DEVELOPMENT

Akwesasne Legislative Commission

- Working Task Groups
- Law Enactment Procedural Regulation
- Akwesasne Law Registry

ADJUDICATION

Akwesasne Review Commission oversees the Justice

- Akwesasne Court adjudicates Akwesasne Laws and By-laws

ENFORCEMENT

Akwesasne Mohawk Police Commission

- Akwesasne Mohawk Police
- Compliance Officers and Conservation Officer

❖ The Mohawk Council of Akwesasne is developing a justice system that combines the principles of the traditional values and administering equitable and effective justice in a complex, multi-cultural, multi-jurisdictional world based on relevancy to the Mohawks at Akwesasne.

❖ MCA has set out to create its own body of law, one that addressed the issues being faced and reflects the community's value – values that focus less on individual rights than on individual obligations to the community. Community law also takes the complicated legal context into account.

VISIONING FOR AKWESASNE

Justice Needs in a Mohawk Community: Akwesasne

By B Steinke (1995) ⁽²⁾

- A system that is feasible,
- A combination of traditional and present system;
- Overseen by an independent body separate from the Justice system or staff
- An all Native Court
- Community-driven sentences/sanctions
- Strong Leadership
- Own Justice system for everything
- Mohawks develop own laws
- More programs to deal with offenders
- Rights of community and individuals be protected equally
- Mohawk Council or justice system should deal with civil issues
- Address the core problems
- Reduce the severity and frequency

A justice system or program that helps everyone: offender, victim, family of the victim, offender and community

Involve all parts of the community: justice, police, social service, education, council elders, victims, family members and community

Strong leadership is essential

Resurgent Justice: Rebuilding the Mohawk Justice System

A Case Study for the Mohawk Council of Akwesasne

- Law-making
- Implementation and enforcement
- Adjudication and the processing of disputes
- Resolution, redress and restoration

Native Nations Institute (2007)

CHALLENGES

- Integration
- Expansion
- Indigenization
- Everyday Use
- Funding
- International Boundary

ADJUDICATION

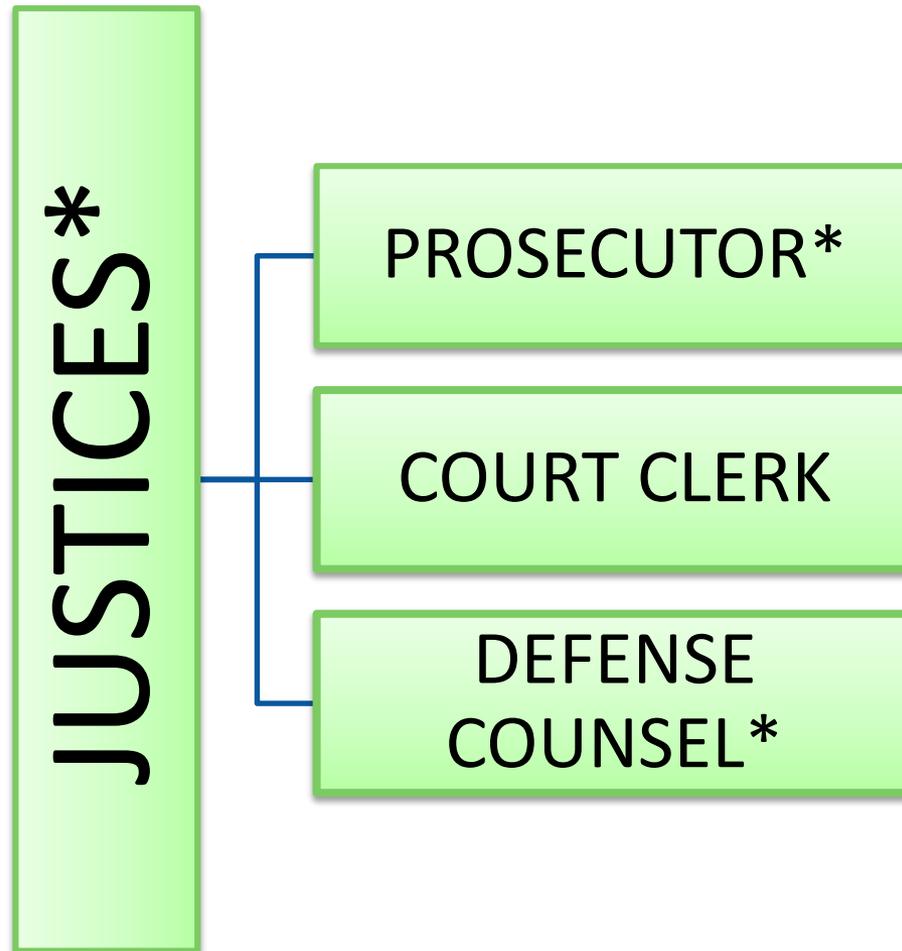
CANADA SANCTIONS

- No criminal law jurisdiction
- Aboriginal justice analogous to provinces/territories
- Sanctions not exceeding summary conviction
- Penal system
- Offender-focus

AKWESASNE: REMEDIES

- Mindful of restorative justice
- Remediation: fines/penalties
 - Responsibility: accepting resp for their actions
 - Restoration: maintain balance (comm service, etc)
 - Restitution: of a person
 - Orders must be consistent with Restorative Justice

AKWESASNE MOHAWK COURT



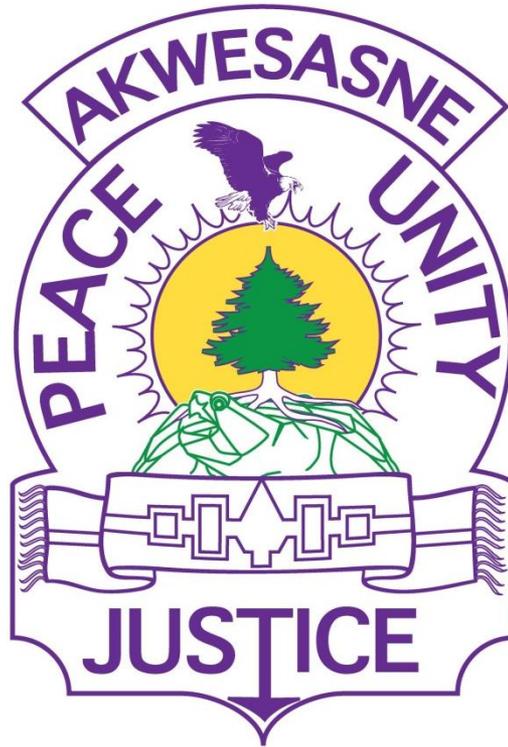
*indicates independent contractual services

AKWESASNE REVIEW COMMISSION

1. Ensures community confidence in those persons entrusted to resolve conflict in Akwesasne.
2. Sets standards to ensure every Justice/Decision-making body:
 - Is accountable to the community and answerable for their conduct;
 - Resolves conflict without interference from government, interest groups or others;
 - Follows the principles of Kanikonri:io, respect and fairness.
 - May contract for services, if necessary (investigation)

ARC: Judicial Independence

- Establishes the level of remuneration, honoraria and benefits for a Justice and Decision-making body in accordance with Akwesasne Law or Charter.
- Rules on Conflict of interest.
- Has exclusive responsibility to receive, investigate and decide upon a Complaint made in respect to a Justice or member of a Decision-making body.



**NIAWEN
MERC
THANK YOU**