

AKWESASNE REVIEW COMMISSION CHARTER

Mohawk Council of Akwesasne

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MISSION

To raise the level of community confidence in those persons entrusted to resolve conflict in Akwasasne, where no oversight body has otherwise been established, the Akwasasne Review Commission shall set standards to ensure:

- (a) every Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice) and every member of a Decision-Making Body in Akwasasne is accountable to the community and answerable for their conduct;
- (b) every Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice) and every member of a Decision-Making Body in Akwasasne shall resolve conflict brought without interference from government, interest groups or others; and,
- (c) every Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice) and every member of a Decision-Making Body in Akwasasne shall follow the principles of Kanikonri:io (a good mind), respect and fairness.

1.0 TITLE

- 1.1 This Charter may be referred to as the “**Akwasasne Review Commission Charter**”.

2.0 DEFINITIONS

- 2.1 In the Akwasasne Review Commission Charter:

“**Ad-Hoc Committee**” means a grouping of at least two sitting members of the Akwasasne Review Commission;

“**Akwasasne**” means the geographic area over which the Mohawk Council of Akwasasne has jurisdiction;

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

“Akwasasne Tekaiia’torehthà:ke (Akwasasne Court)” means “where they judge”, commonly known as the Akwasasne Court exercising authority under this Law;
[Pronounced: day ga yut doe lay ta gay]

“Akwasasne 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 Teshatiia’toréhtha (Appeal Justice), and the oversight, including the hearing of complaints against a Ratiianerenhserakweniéhstha (Justice) and Teshatiia’toréhtha (Appeal Justice);

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

“Arbitrator” means an independent third party appointed by Resolution to hear and determine, on a final basis, a specific question or issue;

“Business interest” means any financial involvement in a business;

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

“Complaint” means a written statement signed by a Member, requesting that the personal or professional conduct of any Justice or any member of a Decision-Making Body to be examined and remedied to ensure community confidence;

“Council” means the Mohawk Council of Akwasasne, as duly elected pursuant to the Akwasasne Election Law;

“Decision-Making Body” means a board, commission, tribunal or other body with authority under an Akwasasne Law or Charter to make decisions;

“Immediate Family” means, when determining a conflict of interest within this Charter, any person living in the same residence such as a spouse (including a common-law spouse), parent, parent-in-law, grandparent, brother, sister, aunt, uncle, niece or nephew and child (including adopted children or those living with you as your child), grandchild or any spouse of an immediate family member;

“Member” means a person who is enrolled on the Akwasasne membership roll under the Akwasasne Membership Code, but does not include probationary members;

“Notice” means a written, printed or electronic announcement;

“Akwasasne Review Commission Regulation” means this Akwasasne Review Commission Regulation, as adopted by Council.

“Raontiwenakarátats (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 Akwasasne Tekaiia’torehthà:ke (Akwasasne Court);
[Pronounced: loon wa dee wun na ga la dutz]

“Ratiianerenhserakweniéhstha (Justice)” means “they are respecting the law”, commonly known as a Justice of the Akwasasne Tekaiá'torehthà:ke (Akwasasne Court) appointed with authority and responsibility to hear and determine matters under section 5.0 of the Akwasasne Mohawk Court Law and includes *Akwasasne 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]

“Resolution” means a Mohawk Council Resolution (MCR) formally passed by the Mohawk Council of Akwasasne pursuant to its governing authority;

“Teshatiia'toréhtha (Appeal Justice)” means “they exam/judge the matters again”, commonly known as an appeal Justice of the Akwasasne Tekaiá'torehthà:ke (Akwasasne Court) appointed under the Akwasasne Mohawk Court 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 Akwasasne Tekaiá'torehthà:ke (Akwasasne Court).
[Pronounced: joon gway da day saw go wun nuh qua]

3.0 PURPOSE, DUTIES AND RESPONSIBILITIES

- 3.1** The Akwasasne Review Commission is established as an independent body to hold every Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice) and every member of a Decision-Making Body accountable to the community by enabling their conduct to be examined fairly and impartially pursuant to this Charter and Akwasasne Review Commission Regulation.
- 3.2** The Akwasasne Review Commission shall develop, confirm and amend from time to time as necessary, an Akwasasne code of judicial conduct which will be enforced by the Akwasasne Review Commission.
- 3.3** The decisions of the Akwasasne Review Commission shall set additional standards and give clarity to the code to ensure community confidence in those persons entrusted to resolve conflict.
- 3.4** The Akwasasne Review Commission shall have exclusive responsibility to receive, investigate and decide upon a Complaint made in respect of the conduct of every Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice) and every member of a Decision-Making Body.

- 3.5** Every five (5) years from the coming into force of the Akwasasne Mohawk Court 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.
- 3.6** The Akwasasne Review Commission shall submit to the Ratiianerenhserakweniéhstha (Justices), Teshatiia'toréhtha (Appeal Justices) and to the Akwasasne Tekaiia'torehthà:ke (Akwasasne Court) a list of approved trainings to be completed within an agreed upon timeframe by the Akwasasne Review Commission.
- 3.7** Every five (5) years or as a change in circumstance may make necessary, the Akwasasne Review Commission shall establish for a member of a Decision-Making Body in accordance with an Akwasasne Law an approved level of honoraria and benefits.
- 3.8** For the purpose of section 3.5, the coming into force of an Akwasasne Law that re-affirms the Akwasasne Mohawk Court, is a "change in circumstances".
- 3.9** New Ratiianerenhserakweniéhstha (Justice) and Teshatiia'toréhtha (Appeal Justice) shall be appointed from persons who meet the criteria determined by the Akwasasne Review Commission in accordance with this Akwasasne Court Law.
- 3.10** The Akwasasne Review Commission shall appoint persons who satisfy the eligibility criteria to act as Raontiwenakarátats (Prosecutor) and Tsionkwéta Teshakowennákhwa (Duty Counsel) in the Akwasasne Tekaiia'torehthà:ke (Akwasasne Court) in accordance with the Akwasasne Court Law.
- 3.11** The Akwasasne Review Commission shall make recommendations to the Director of the Akwasasne Justice Department regarding expenditures and training necessary to maintain community confidence in the Akwasasne Tekaiia'torehthà:ke (Akwasasne Court) and every Decision-Making Body.
- 3.12** Any party to a matter before the Akwasasne Mohawk Court who believes that a Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice) or a member of a Decision-Making Body has a conflict of interest may request the Akwasasne Review Commission for a ruling as to whether a conflict of interest exists. The request made shall be addressed as a Complaint.
- 3.13** Any party to a matter before the Akwasasne Mohawk Court who believes that a Ratiianerenhserakweniéhstha (Justice), Teshatiia'toréhtha (Appeal Justice) or a member of a Decision-Making Body has engaged in professional conduct which brings the administration of justice into disrepute may request the Akwasasne Review Commission to review the circumstances. The request made shall be addressed as a Complaint.
- 3.14** The Akwasasne Review Commission must provide written notice of their decision together with reasons to the complainant, the person whose conduct was challenged, the Akwasasne Justice Department and Council.

- 3.15** The Akwasasne 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 the Akwasasne Court Law, the Akwasasne Review Commission Charter, Akwasasne Laws and Regulations.
- 3.16** An Akwasasne Review Commission decision on a complaint or remedy is final and not subject to appeal.
- 3.17** The Akwasasne Review Commission may, subject to responsible expenditure constraints, take any steps, or make any inquiry, or require production of any information, necessary to carry out these purposes.
- 3.18** The Akwasasne Review Commission, through the Director of the Akwasasne Justice Department, may contract for services necessary to achieve these purposes.
- 3.19** In the event of conflict between the Akwasasne Review Commission Charter and a provision in any Akwasasne Code or Law granting authority to the Akwasasne Review Commission, the provisions of the specific Akwasasne Law will prevail.
- 3.20** Mohawk Council of Akwasasne recognizes the authority granted to the Akwasasne Review Commission in this Charter and except for the responsibilities of Council described in this Charter, will not interfere with or become involved in the operations or the decision-making of the Akwasasne Review Commission.
- 3.21** The Akwasasne Review Commission shall submit an annual report of its activities for inclusion in the annual report from Council to the community. The report shall generally describe the activities of the Akwasasne Review Commission but shall protect the confidentiality of specific deliberations, proceedings or decisions in individual cases.

4.0 AKWASASNE REVIEW COMMISSION MEMBERS

- 4.1** The Akwasasne Review Commission shall reflect and balance the diversity of perspectives within the community and shall be comprised of six (6) members.
- 4.2** At least one (1) Akwasasne Review Commission member will be appointed from each of the three (3) districts in Akwasasne.
- 4.3** Prior to making appointments to the Akwasasne Review Commission, Council shall invite applications from any interested Member.
- 4.4** The notice to apply to be appointed to the Akwasasne Review Commission will be posted in public places within Akwasasne and will be published in a community newspaper with circulation in Akwasasne and on the Council website: www.akwasasne.ca. The notice will specify the qualifications for appointment.

4.5 In order to qualify for appointment to the Akwasasne Review Commission, a person must, as of the date of appointment:

- (a) be a Member;
- (b) have attained the age of thirty-five (35) years of age;
- (c) have been resident in the territory of a First Nation for at least ten (10) years and within the past fifteen (15) years;
- (d) have knowledge of Mohawk culture and traditions;
- (e) have good character, credibility and reputation in the Akwasasne community;
- (f) have adequate education and relevant work or life experience, and possess an interest in the settling of disputes;
- (g) not be an elected member of Council or the Saint Regis Mohawk Tribal Council, an employee of the Akwasasne Justice Department;
- (h) not be a member of any Decision-Making Body;
- (i) not be a Tsionkwéta Teshakowennákhwa (Duty Counsel) or Raontiennakarátats (Prosecutor);
- (i) never have been convicted of an offense under the Akwasasne Banishment Law, the Akwasasne Drug Law, an indictable offense in Canada or a felony in the United States;
- (j) not have been convicted of an offense under Akwasasne Law, a summary conviction offense in Canada, or a misdemeanor in the United States in the past five (5) years;
- (k) produce to the Director of the Akwasasne Justice Department a valid certificate from the Canadian Police Information Centre;
- (l) never have been previously removed from the Akwasasne Review Commission; and
- (m) be considered as “in good standing” with the *Akwasasne Good Standing Policy*.

4.6 An Akwasasne Review Commission member will be appointed by Resolution upon recommendation from an Ad-Hoc Committee of the Akwasasne Review Commission.

- 4.7** A temporary Akwasasne Review Commission member, upon recommendation from the Akwasasne Review Commission, may be appointed by Resolution.
- 4.8** A temporary Akwasasne Review Commission member will possess the powers listed in the Resolution of appointment, and a temporary Akwasasne Review Commission member shall discharge responsibilities in a manner consistent with this Charter, the terms of appointment and the Akwasasne Review Commission Regulation.

5.0 OATH UPON ACCEPTING APPOINTMENT

- 5.1** Each Akwasasne Review Commission member, before entering on his/her duties, will take and subscribe to the Oath Upon Accepting Appointment in the form attached as Schedule "A" hereto, before an official authorized by law to administer oaths.

6.0 TERM AND TENURE OF APPOINTMENT

- 6.1** An Akwasasne Review Commission member will be appointed for an initial term of three (3) years.
- 6.2** An Akwasasne Review Commission member, by Resolution, upon recommendation of the Director of the Akwasasne Justice Department, may be re-appointed for a term of five (5) years.
- 6.3** The appointment of any Akwasasne Review Commission member may be terminated early in accordance with the standards set forth in section 12 of this Charter.

7.0 HONORARIUMS

- 7.1** Each Akwasasne Review Commission member, whether appointed for a term or temporarily, will receive an honorarium for time spent in carrying out their duties, in an amount determined by Resolution. For greater certainty, this includes participation in;
- (a) training;
 - (b) committee meetings;
 - (c) investigation or Complaint related sessions;

- (d) drafting decisions, or
- (e) activities as prior authorized by the Director of the Akwasasne Justice Department.

7.2 Any honorarium payable to an Akwasasne Review Commission member, as established by Resolution, is subject to review every five (5) years.

7.3 No Akwasasne Review Commission member will accept any financial compensation for serving on the Review Commission except in accordance with sections 7.1 and 7.2 of this Charter.

8.0 MEETINGS TO CONDUCT BUSINESS

8.1 The Akwasasne Review Commission will meet at least bi-annually (twice a year) and at such other times as needed to carry out its responsibilities.

8.2 The Akwasasne Review Commission will conduct its meetings and investigations in the manner established by the Procedural Regulation.

9.0 MEETINGS TO CONSIDER A COMPLAINT & INVESTIGATION OF A COMPLAINT

9.1 The Akwasasne Review Commission must consider a Complaint made against the conduct of every Justice and every member of a Decision-Making Body.

9.2 A Complaint must be filed with the Director of the Akwasasne Justice Department in the manner established pursuant to the Akwasasne Review Commission Regulation.

9.3 The Director of the Akwasasne Justice Department will schedule a business meeting of the Akwasasne Review Commission within five (5) business days after a Complaint is filed.

9.4 The Akwasasne Review Commission upon receiving a Complaint, or upon its own direction, shall within five (5) business days, form an Ad-Hoc Committee pursuant to the Akwasasne Review Commission Regulation.

- 9.5 The Ad-Hoc Committee will proceed to investigate a Complaint pursuant to the Akwasasne Review Commission Regulation.
- 9.6 All Akwasasne Review Commission members whom have not been disqualified due to a conflict of interest must consider the consensus reached by the Ad-Hoc Committee.
- 9.7 Any decision, direction or request from the Akwasasne Review Commission must be in writing, and in accordance with the Akwasasne Review Commission Regulation.
- 9.8 The Akwasasne Review Commission may release, in full or in part, any decision, direction or recommendation necessary to ensure community confidence in those persons entrusted to resolve conflict in Akwasasne.
- 9.9 The Akwasasne Review Commission must comply with reporting requirements set forth in any Akwasasne Law.

10.0 CONFLICT OF INTEREST RULES REGARDING REVIEW COMMISSION MEMBERS

- 10.1 All Akwasasne Review Commission members shall avoid a conflict of interest and not participate in, or work on, the identified file, unless all of the unaffected Akwasasne Review Commission members and all parties agree to allow it.
- 10.2 A conflict of interest arises in any situation where an Akwasasne Review Commission member or their Immediate Family has a personal or Business Interest in the Complaint being considered.
- 10.3 Procedures for dealing with a conflict of interest shall be established by the Akwasasne Review Commission Regulation.
- 10.4 A Ratiianerenhserakwenienhstha (Justice) has jurisdiction over any question on the conflict of interest of an Akwasasne Review Commission member where the matter is in relation to a Decision-Making Body.
- 10.5 A justice from an outside court has jurisdiction over any question on the conflict of interest of an Akwasasne Review Commission member where the matter is in relation to a Ratiianerenhserakwenienhstha (Justice) or Teshatiia'torehtha (Appeal Justice).

11.0 CONFIDENTIALITY

- 11.1** The Akwasasne Review Commission members must not disclose information received by them in the course of their work with the Akwasasne Review Commission, including written or oral information, unless it is required by Akwasasne Law.
- 11.2** The Akwasasne Review Commission members may release information, including a portion or whole of their recommendations or decision, as may be necessary to ensure community confidence.

12.0 VACANCIES AND REMOVAL

- 12.1** A position on the Akwasasne Review Commission will be deemed vacant where an Akwasasne Review Commission member;
- (a) dies;
 - (b) resigns by sending Notice to the Director of the Akwasasne Justice Department, a copy of which will be provided by the Director to each Akwasasne Review Commission member;
 - (c) is convicted of an indictable offense in Canada or felony in the United States;
 - (d) fails to attend three consecutive meetings;
 - (e) fails or refuses to sign the Oath Upon Accepting Appointment within thirty (30) days of their appointment;
 - (f) is in breach of the Akwasasne Good Standing Policy for a period of thirty (30) days or longer; or
 - (g) is removed in accordance with section 12.3 of this Charter.
- 12.2** Upon receiving Notice that any circumstances described in section 12.1 of this Charter has occurred, Council shall by Resolution immediately rescind the individual appointment to the Review Commission.
- 12.3** A Review Commission member will be removed if it is determined that the member;
- (a) engaged in dishonorable or questionable conduct which casts doubt on that member's personal or professional integrity or competence;
 - (b) breached the confidentiality provisions in this Charter;

- (c) breached the Oath Upon Accepting Appointment provisions in this Charter;
 - (d) is negligent in their duties and responsibilities as a Review Commission member;
or
 - (e) no longer qualifies to be a member of the Review Commission as set forth in section 4.5 of this Charter.
- 12.4** Proceedings to remove an Akwasasne Review Commission member pursuant to Section 12.3 must be commenced when the Director of the Akwasasne Justice Department receives a sworn affidavit, from a Member, setting forth specific example(s) of improper conduct.
- 12.5** Upon receiving an affidavit seeking the removal an Akwasasne Review Commission member, the Director of the Akwasasne Justice Department will appoint an Arbitrator in the manner established by Akwasasne Review Commission Regulation.
- 12.6** The decision of an Arbitrator appointed pursuant to section 12.5 of this Akwasasne Review Commission Charter shall be final.

13.0 APPEALS

- 13.1** Any decision of the Akwasasne Review Commission may be appealed to a justice from an outside court, providing written Notice to the Director of the Akwasasne Justice Department.
- 13.2** The decision of the justice from the outside court as identified under subsection 13.1 is final.
- 13.3** Council may by Resolution enter into agreements with any other entity to establish appeal options.

14.0 IMMUNITY

- 14.1** The Akwasasne Review Commission members shall be forever immune from liability arising from actions performed in their capacity as an Akwasasne Review Commission member provided that the member acted in good faith and in accordance with this Charter.

15.0 AMENDMENTS

15.1 Any changes to this Charter shall be made by Resolution and will take effect on the date of the Resolution or such date as specified therein.

Schedule "A"

FOR THE MOHAWK TERRITORY OF AKWESASNE

AKWESASNE REVIEW COMMISSION

OATH UPON ACCEPTING APPOINTMENT

1. I, _____, do solemnly swear/affirm that I accept my position as Akwesasne Review Commission member with full respect for the people of the Akwesasne community.
2. I will strive to serve the people of Akwesasne faithfully, honestly and with integrity. I will not bring disgrace upon the people of Akwesasne.
3. I will faithfully and impartially carry out the duties of an Akwesasne Review Commission member to the best of my ability, will be mindful of the best interests of the people of Akwesasne, and will bring forth any changes made in my circumstance that may impact my continued eligibility.
4. I swear/affirm to uphold, during and subsequent to my term as Akwesasne Review Commission member, the provisions for confidentiality in the Akwesasne Review Commission Charter.

Ehtho Niiotonhake Ne Onkwanikonra (Let it be that way in our minds)

Sworn/affirmed before me in the)
 Territory of Akwesasne)
 this ___ day of _____)
 in the year _____ .)

 Commissioner of Oaths, etc.

 Akwesasne Review Commission member