

General

Akwesasne Review Commission (ARC)

**AKWESASNE REVIEW
COMMISSION**

Procedural Regulations

November 21, 2013

Mohawk Council of Akwesasne

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1. PURPOSE

- 1.1 This document is enacted under the Akwesasne Review Commission Charter.
- 1.2 The purpose of this Procedural Regulation is to set out the administrative procedures for the Akwesasne Review Commission.

2. DEFINITIONS

- 2.1 In this Procedural Regulation:

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

“Akwesasne Mohawk Court” means the existing court established under Resolution;

“Akwesasne Review Commission” means the body established by the Akwesasne Review Commission Charter for the purposes set out in that Charter which include the hearing of a Complaint regarding the conduct of any Justice or any member of a Decision-Making Body;

“Chairperson” means the Akwesasne Review Commission member selected to act as Chairperson by her/his peers during a particular session;

“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;

“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, be examined and remedied to ensure community confidence;

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

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

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

“Procedural Regulation” means this Akwesasne Review Commission Procedural Regulation, as adopted by Council;

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

3. APPLICATION OF THESE PROCEDURAL REGULATION

3.1 This Procedural Regulation applies to the Akwesasne Review Commission, as described in the Akwesasne Review Commission Charter.

3.2 This Procedural Regulation is to be broadly interpreted in the interest of the Akwesasne community to achieve the most just and expeditious determination on the merits of every Complaint.

3.3 The Akwesasne Review Commission may depart from a procedure in this Procedural Regulation where it is just and appropriate to do so under the circumstances.

4. AKWESASNE REVIEW COMMISSION MEMBERS

4.1 The Akwesasne Review Commission and those appointed thereto shall reflect and balance the diversity of perspectives within the community.

4.2 Akwesasne Review Commission members will be appointed by Resolution upon recommendation of an Ad-Hoc Committee. If there are fewer than two (2) sitting Akwesasne Review Commission members available to form a committee, the Director of the Akwesasne Justice Department will review applications and make a recommendation to Council.

4.3 A temporary Akwesasne Review Commission member will be appointed by Resolution upon recommendation of an Ad-Hoc Committee of sitting Akwesasne Review Commission members.

4.4 A temporary Commission member has the full responsibility of an Akwesasne Review Commission member as stated in the Akwesasne Review Commission Charter and this Procedural Regulation, unless modified in the Resolution of appointment.

5. RESPONSIBILITY OF THE AKWESASNE REVIEW COMMISSION

5.1 The Akwesasne Review Commission may conduct business sitting as a whole or may delegate responsibility to an Ad-Hoc Committee. Any decision of an Ad-Hoc Committee must be reviewed and confirmed by the Akwesasne Review Commission sitting as a whole.

5.2 The Akwesasne Review Commission will establish an Ad-Hoc Committee or sit as a whole to determine or make recommendations regarding:

- a.) the appointment of a temporary Akwesasne Review Commission member;
- b.) the roles and responsibilities of a temporary Akwesasne Review Commission member;
- c.) the impact regarding a request for leave of absence; and,
- d.) areas identified for research, training or external assistance to be taken by a Justice and every member of a Decision-Making Body.

5.3 Every five (5) years or as changes in circumstances make necessary, the Akwesasne Review Commission will set the rate of compensation for every Justice and every Akwesasne Appeal Tribunal member. In conducting its inquiry, the Akwesasne Review Commission may consider:

- a) the role of adequate compensation to ensure decision making independence;
- b) the need to attract and retain reputable and committed Members to sit on hold the position;
- c) the written submissions from Council and the Justice and/or members of the Decision-Making Body whom will be impacted; and
- d) any other criteria that the Akwesasne Review Commission considers relevant to maintain community confidence in the Akwesasne Mohawk Court and every Akwesasne Decision-Making Body.

5.4 The Akwesasne Review Commission shall review any Complaint (Form "A") made regarding the integrity and conduct of every Justice and every member of a Decision-Making Body in Akwesasne.

5.5 The Akwesasne Review Commission shall receive from any person a request to determine whether a conflict of interest arises in any process before the Mohawk Court of Akwesasne or any Decision-Making Body. A request to determine whether a conflict of interest does exist shall be deemed a "Complaint" and shall be determined in accordance with the standards set forth in the Akwesasne Law which established the body hearing the matter.

6. CONDUCTING BUSINESS

6.1 The Director of the Akwesasne Justice Department shall be responsible for scheduling all business meetings of the Akwesasne Review Commission.

6.2 The Director of the Akwesasne Justice Department shall communicate the agenda for any business meeting at least seventy-two (72) hours in advance. Every Akwesasne Review Commission member is required to provide the Director of the Akwesasne Justice Department an up-to-date e-mail address appropriate for receiving confidential communications.

6.3 The Akwesasne Review Commission shall conduct business if a quorum of members is either physically present or available by telecommunication device. Quorum is 50% +1 of all Akwesasne Review Commission members and does include the Chairperson.

6.4 Quorum of an Ad-Hoc committee shall be 100% participation in person or by telecommunication device.

6.5 Every Akwesasne Review Commission meeting shall commence with the appointment of a Chairperson, confirmation of the agenda, and disclosure of whether a conflict of interest situation has/may arise.

6.6 Decisions of the Akwesasne Review Commission, including every Ad-Hoc Committee, must be made by consensus.

6.7 All Akwesasne Review Commission members not excluded for a conflict of interest are required to provide their perspective to assist in building the discussion towards reaching a consensus.

6.8 If Akwesasne Review Commission members require assistance, then the Chairperson shall request intervention from sources made available by the Director of the Akwesasne Justice Department.

6.9 The Akwesasne Review Commission may suspend its discussion for not more than forty-eight (48) hours and shall remain in session until its deliberations are concluded. The Akwesasne Review Commission may suspend discussion, for not more than thirty (30) calendar days, on an issue directed for consideration by an Ad-Hoc Committee.

6.10 Every decision of the Akwesasne Review Commission or an Ad-Hoc Committee must be evidenced in writing.

6.11 Every decision of an Ad-Hoc Committee must be immediately communicated to the Akwesasne Review Commission sitting as a whole.

6.12 The decision(s) of the Akwesasne Review Commission shall become effective upon publication.

7. CONDUCTING INQUIRY INTO COMPLAINTS

7.1 The Akwesasne Review Commission, to maintain community confidence in the Akwesasne Mohawk Court, the Akwesasne Appeal Tribunal and every Decision-Making Body in Akwesasne, must review any allegation of misconduct without regard to how the information is received or brought forward.

7.2 A Complaint shall be presented by the Director of the Akwesasne Justice Department who shall schedule a business meeting of the Akwesasne Review Commission.

7.3 All Akwesasne Review Commission members shall declare whether they are able to participate in the hearing of the Complaint and confirm whether they must not participate due to a conflict of interest.

7.4 If necessary, the Akwesasne Review Commission shall determine whether there is a need for the appointment of a temporary Akwesasne Review Commission member.

7.5 The Akwesasne Review Commission shall establish an Ad-Hoc Committee to investigate the Complaint. For the purpose of investigating a Complaint, the Ad-Hoc Committee shall hold as many meetings as deemed necessary to obtain as much information as is available.

7.6 The Ad-Hoc Committee may make a recommendation to the Akwesasne Review Commission members as a whole that a request should be made to the Director of the Akwesasne Justice Department for additional resources.

7.7 The Ad-Hoc Committee must reach a decision by consensus while using the principles of Kanikonri:io (a good mind), respect and fairness, and while seeking to maintain community confidence in the Akwesasne Mohawk Court and every Decision-Making Body in Akwesasne.

7.8 The Ad-Hoc Committee may consider any verbal comment, writing, act, delay, omission or inaction when assessing the concerns expressed in the Complaint. The Ad-Hoc Committee may consider such other information necessary to maintain community confidence in those entrusted to resolve conflict in Akwesasne.

7.9 The Ad-Hoc Committee may recommend that a Complaint be dismissed if it is frivolous, an abuse of process or without merit.

7.10 If the Ad-Hoc Committee recommendation, that a Complaint should be dismissed, is accepted by the Akwesasne Review Commission sitting as a whole, then written reasons for its decision shall be provided to the individual whom made the Complaint.

7.11 The Ad-Hoc Committee may recommend that a Complaint should be investigated in a more thorough manner.

7.12 If the Ad-Hoc Committee recommendation, that a Complaint should be subject to further review, is accepted by the Akwesasne Review Commission sitting as a whole, then the individual accused of improper conduct will be provided Notice of the Complaint and shall be provided an opportunity to make written or oral submission and otherwise meet with the Ad-Hoc Committee.

7.13 The Ad-Hoc Committee shall conduct the investigation in private and in a discrete manner.

7.14 The Ad-Hoc Committee may receive commentary by oral or written testimony which is declared to be truthful.

7.15 The Ad-Hoc Committee may, if reasonable draw a negative inference if a person refuses to participate in the investigation.

7.16 The Ad-Hoc Committee shall attempt to facilitate a means of restoring peace and community confidence.

7.17 Although a Complaint may be filed by an individual, the Ad-Hoc Committee may terminate an inquiry into a Complaint if satisfied any conflict can be resolved in a manner which protects the collective interests of the Akwesasne community.

7.18 Where the Ad-Hoc Committee determines that it is necessary for a limited adversarial approach to be taken, a report (*form "B"*) shall be prepared to ensure that the table is set and the participants are prepared to proceed.

7.19 Where necessary, the Ad-Hoc Committee shall reach a consensus regarding recommendations necessary to ensure every Justice and every member of a Decision-Making Body in Akwesasne is accountable to the community.

7.20 The Ad-Hoc Committee is not limited in recommending corrective steps to preserve community confidence.

7.21 The Ad-Hoc Committee will report to the Akwesasne Review Commission sitting as a whole but excluding any member disqualified due to a conflict of interest. The Akwesasne Review Commission may request additional information and then will either accept the recommendations or suggest modification. The Akwesasne Review Commission shall not suspend discussion of the matter, for a period of more than forty-eight (48) hours until consensus is reached.

7.22 The consensus of the Akwesasne Review Commission shall be communicated, in writing, to every person who participated in the inquiry by the Director of the Akwesasne Justice Department.

7.23 The Director of the Akwesasne Justice Department shall notify the Akwesasne Mohawk Council of the consensus of the Akwesasne Review Commission.

7.24 The Director of the Akwesasne Justice Department shall make public any details of the complaint not deemed to be confidential by the Akwesasne Review Commission.

8. RECORD OF BUSINESS CONDUCTED BY THE REVIEW COMMISSION

8.1 Meetings of the Review Commission will be recorded by audio device and kept by the Director of the Akwesasne Justice Department according to the records management policy.

8.2 Transcription of a Review Commission meeting is publicly available, unless the Review Commission has placed a publication ban on the material.

8.3 A transcription fee will be charged in accordance with the fee schedule approved for the Akwesasne Mohawk Court.

9. DECISIONS OF THE REVIEW COMMISSION

9.1 Decisions of the Review Commission are to be made fairly and justly. This includes:

- a) dealing with matters in a way which is proportionate to the importance of the matter, the complexity of the issues, the anticipated costs and the resources of the parties;
- b) avoiding unnecessary formality and seeking flexibility;
- c) ensuring, as far as possible, that the interested persons are able to participate fully in proceedings; and,
- d) avoiding delay, so far as compatible with proper consideration of the issues.

9.2 A Complaint must be resolved in a timely manner, or within timelines directed by a specific Akwesasne Law.

10. AMENDMENTS

10.1 Any amendment to this Procedural Regulation will be made by Resolution.

Form "A" Complaint Form

(Pursuant to Procedural Regulation 5.4)

Instructions

- This Complaint is made pursuant to the Akwesasne Review Commission Charter.
- A copy of the Akwesasne Review Commission Charter may be received by attending the Akwesasne Justice Department or the Akwesasne Mohawk Court.

- A Complaint must be considered by the Akwesasne Review Commission.
- The Akwesasne Review Commission operates pursuant to Procedural Regulation.
- A copy of the Akwesasne Review Commission Procedural Regulations may be received by attending the Akwesasne Justice Department or the Akwesasne Mohawk Court.

- A Complaint may be filed by a Member; or by any party to a matter before the Akwesasne Mohawk Court who is claiming a conflict of interest or profession conduct which brings the administration of justice into disrepute.
- A person who files a Complaint must notify the Director of the Akwesasne Justice Department if there is any change to the contact information.

- It is important to provide all known information as a Complaint may be resolved solely on the basis of the information written or attached to the Complaint.
- Any document attached to the Complaint should be a photocopy, but it is essential that you retain the original document in case its authenticity is challenged.
- A Complaint must express the remedy sought which will satisfy the best interest of the Akwesasne community.
- Although a Complaint is initiated by an individual the Akwesasne Review Commission must consider the collective interest of the Akwesasne community.

- You will be notified in writing of every decision made by either Akwesasne Review Commission.

FOR THE MOHAWK TERRITORY OF AKWESASNE

AKWESASNE REVIEW COMMISSION

COMPLAINT

To raise the level of community confidence in those persons entrusted to resolve conflict in Akwesasne, every Justice and every member of a Decision-Making Body in Akwesasne is accountable to the community and answerable for their conduct:

TAKE NOTICE THAT pursuant to the Akwesasne Review Commission Charter a Complaint is made by,

Your Name: _____

Made as : _____ a Member as defined in the Charter,
_____ a Party to a matter in the Akwesasne Mohawk Court.

Address: _____
in the District of: _____

Contact Information: (list only those you find suitable for receiving written communications)

Mail: _____

E-Mail: _____

Fax: _____

The Complaint is made against: _____

who does hold the title of: _____

The Review Commission must consider a Complaint made against the conduct of every Justice and every member of a Decision-Making Body. It is important to be as specific and thorough as possible. The Complaint *may* be decided only on the basis of the information which you have provided.

The Complaint will be kept confidential within the Akwesasne Review Commission until further notice, but may be shared with the Justice or the Decision-Making Body member should the file proceed for further review.

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I, _____ appreciate the serious nature of this process, and I believe that the following information raises questions which must be addressed to ensure community confidence in those who resolve conflict in Akwesasne.

(attach additional pages if necessary)

Total number of pages including attachments: _____.

If the Complaint does not proceed the file will be destroyed so it is essential that you do not attach original materials.

Akwesasne Review Commission Procedural Regulation

Having consideration of the information provided, to restore community confidence I, recommend that the appropriate remedy is:

(attach additional pages if necessary)

Total number of pages including attachments: _____.

Akwesasne Review Commission Procedural Regulation

If the Complaint does proceed, the person whose conduct is being reviewed will receive a copy of the Complaint. Efforts will be made to resolve the conflict in a non-adversarial manner.

You and the person whose conduct is being reviewed may be required to discuss the conflict in a meeting facilitated by the Akwesasne Review Commission.

If efforts to resolve the conflict in a non-adversarial manner are not successful, then a meeting may be held where you must explain your perspective and answer questions.

I agree to participate in the conflict resolution process set out in the Procedural Regulation.

I am prepared to proceed, with this Complaint, made today the _____ day of

_____, 201__.

Signature of:

(do not write below this line)

Form "B" Report Form

(Pursuant to Procedural Regulation 7.18)

FOR THE MOHAWK TERRITORY OF AKWESASNE

AKWESASNE REVIEW COMMISSION

REPORT OF THE AD-HOC COMMITTEE

On _____ a Complaint signed by _____
was received by the Director of the Akwesasne Justice Department.

On _____ the Complaint was presented to the Akwesasne
Review Commission. On that date an Ad-Hoc Committee was established to investigate
the Complaint.

The following Akwesasne Review Commission members have been disqualified from
participation due to a conflict of interest: _____

On _____ the Ad-Hoc Committee recommended that a
further investigation be conducted based upon the following considerations:

On _____ the Akwesasne Justice Commission sitting as a
whole, except the following members _____
accepted the recommendation of the Ad-Hoc Committee.

On _____ Notice of the Complaint was provided to _____
_____ who holds the title of _____.

On _____ after reviewing the perspective of _____
_____, the Akwesasne Justice Commission has narrowed the issues
and/or facts to be determined. To resolve the conflict the following must be
determined:

Today, _____ we have gathered to determine how further information will be
presented for consideration.

It is agreed,

1. All parties are prepared to proceed to a formal meeting for the purpose of
presenting their perspective and answering questions from any person present.
2. The final meeting will be conducted in a limited adversarial manner which
permits all participants to express their perspective and hear questions seeking
clarification.
3. Present at the final meeting will be, the Ad-Hoc Committee members:

_____, the person making the Complaint and the following persons
whom offer their support _____,
_____, and _____
and the following persons whom offer their support
_____.

4. The Ad-Hoc Committee shall determine the seating arrangements and shall
acknowledge whose opportunity to speak through the passing of an eagle
feather.
5. Any person who interrupts shall be cautioned to refrain from showing contempt
for the process.
6. No person who has not previously been identified may provide their perspective
and no issues not previously disclosed may be raised as a topic for discussion.
7. The Ad-Hoc Committee may ask questions and shall offer their perspective to
further narrow discussion.
8. The Ad-Hoc Committee may temporarily pause a formal meeting to provide an
opportunity for resolution discussions.

9. The Ad-Hoc Committee may conclude the meeting and verbally advise that a recommendation will be made to the Akwesasne Review Commission sitting as a whole.
10. Attached as Appendix "A" to this document is a complete list of all documentation to be relied upon. It is agreed that no additions may be made without the permission of the Ad-Hoc Committee.
11. Due to unique circumstances in this Complaint, additional considerations are as follows:

EACH PARTICIPANT AND THE AD-HOC COMMITTEE AGREE THAT THIS MEMORANDUM WILL SERVE AS THE BASIS FOR CONDUCTING THE FORMAL MEETING WHICH WILL TAKE PLACE ON: _____ the _____ day of _____, 201__.

Signature of the Complaint filer

Signature of _____ who holds the title of _____

Signature of the Ad-Hoc Committee Chairperson