

**AKWESASNE**  
**FINANCIAL ADMINISTRATION LAW**

**JUNE 7, 2019**

**This document provides tracked changes from the 2016 version that was shared for community consultation and the 2019 version reflecting adjustments made based on community feedback. This document is a resource to help show all of the changes made to the proposed document.**

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WHEREAS:

A. The Mohawks of Akwesasne have Aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the *Constitution Act, 1982*, which include the inherent rights of self-government and jurisdiction over their lands, people and resources including the right to make laws respecting the financial administration of Akwesasne;

~~B. Pursuant to section 9 of the *First Nations Fiscal Management Act*, the Council of a First Nation may make laws respecting the financial administration of the First Nation;~~

~~C.B.~~ The Mohawk Council of Akwesasne considers it to be in the best interests of Akwesasne to make a financial administration law for such purposes which complies with the standards for financial administration laws established by the First Nations Financial Management Board under the *First Nations Fiscal Management Act*; and

~~DC.~~ The Mohawk Council of Akwesasne does not ~~raise local revenues~~ collect property taxes and has not enacted a ~~local revenue~~ property taxation law,

NOW THEREFORE, the Mohawk Council of Akwesasne enacts as follows:

## PART I - Citation

### Citation

1. This Law may be cited as the *Akwesasne Financial Administration Law*.

## PART II - Interpretation and Application

### Definitions

2. (1) Unless the context indicates the contrary, in this Law:

~~“Act” means the *First Nations Fiscal Management Act*;~~

“Akwesasne” means the Mohawks of Akwesasne, being a band within the meaning of the *Indian Act*;

“Akwesasne Court” means the court established ~~by Resolution or under~~ Akwesasne Law;

“Akwesasne Law” means any law, including any code, enacted by Akwesasne;

“Akwesasne Official” means a current or former ~~member~~ Member of Council, Officer or employee of Akwesasne;

“Akwesasne Review Commission” means the commission described in the Akwesasne Review Commission Charter adopted by Resolution;

“Akwesasne’s Financial Assets” means all money and other financial assets of Akwesasne;

~~“Akwesasne’s “Akwesasne Lands” means all the lands, resources and waters over which the Mohawk Council of Akwesasne recognized as reserves has jurisdiction over, and for greater certainty includes:~~

- ~~a) Kawehnoke (Cornwall Island) and any island within the meaning 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 the Indian Act; Akwesasne by operation of law;~~

“Akwesasne’s Records” means all Records of Akwesasne respecting its governance, management, operations and Financial Administration;

“Akwesasne’s Tangible Capital Assets” means all non-financial assets of Akwesasne having physical substance that

- (a) are held for use in the production or supply of goods and services, for rental to others, for administrative purposes or for the development, construction, maintenance or repair of other tangible capital assets,
- (b) have useful economic lives extending beyond an accounting period,
- (c) are to be used on a continuing basis,
- (d) are not for sale in the ordinary course of operations, and
- (e) have a replacement cost of at least twenty-five thousand dollars (\$25,000);

“Annual Budget” means the annual budget of Akwesasne that has been approved by Council;

“Annual Financial Statements” means the annual financial statements of Akwesasne referred to in Division 7 of Part IV;

“Appropriation” means an allocation of money under a budget to the purposes for which it may be used;

“Auditor” means the auditor of Akwesasne appointed under section ~~72~~70;

~~“Borrowing Member” means a First Nation that has been accepted as a borrowing member under subsection 76(2) of the Act and has not ceased to be a borrowing member under section 77 of the Act;~~

“Capital Project” means the construction, Rehabilitation or Replacement of Akwesasne’s Tangible Capital Assets;

“Chair” means the person appointed chair of the Finance Committee by Council under subsection 12(1);

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

“Entity” means a corporation or partnership, a joint venture or any other unincorporated association or organization, the financial transactions of which are consolidated in the Annual Financial Statements of Akwesasne in accordance with GAAP;

“Executive Director” means the person appointed by Council under section 17 who is responsible for the overall management of all the day-to-day operations of Akwesasne;

“Financial Administration” means the management, supervision, control and direction of all matters relating to the financial affairs of Akwesasne;

“Financial Competency” means the ability to read and understand financial statements that present accounting issues reasonably expected to be raised by Akwesasne’s financial statements;

“Financial Institution” means the ~~FNFA~~, a bank, credit union or caisse populaire;

“Financial Records” means all Records respecting the Financial Administration of Akwesasne, including the minutes of meetings of Council and of the Finance Committee;

“Fiscal Year” means the fiscal year of Akwesasne set out in section 24;

~~“FMB” means the First Nations Financial Management Board established under the Act;~~

~~“FMB Standards” means the Standards established from time to time by the FMB under the Act;~~

~~“FNFA” means the First Nations Finance Authority established under the Act;~~

“GAAP” means generally accepted accounting principles of the Chartered Professional Accountants of Canada, as revised or replaced from time to time;

“Indemnify” means pay amounts required or incurred to

(a) defend an action or prosecution brought against a person in connection with the exercise or intended exercise of the person’s powers or the performance or intended performance of the person’s duties or functions, or

(b) satisfy a judgment, award or penalty imposed in an action or prosecution referred to in paragraph (a);

“ Information Meeting “ means a meeting held for the purpose of information and dialogue with Akwesasne Members on a specific issue or issues and no Resolutions are proposed or passed at the meeting;

“Life-Cycle Management Program” means the program of inspection, review and planning for management of Akwesasne’s Tangible Capital Assets as described in section ~~8784~~;

“Member” means a person enrolled on the Membership Roll under the *Akwesasne Membership Code*;

“Member of Council” means the Grand Chief and any District Chief of Council;

“Membership Roll” means a list of enrolled Members of the Mohawks of Akwesasne maintained by the Akwesasne Office of Vital Statistics;

“Multi-Year Financial Plan” means the plan referred to in section 25;

“Natural Resources” means any material on or under Akwesasne’s Lands in their natural state which, when extracted, has economic value;

“Officer” means the Executive Director, Senior Financial Officer, and any other employee of Akwesasne designated by Council as an officer;

~~“Other Revenues” means other revenues as defined in section 3 of the Financing Secured by Other Revenues Regulations made under the Act;~~

“Record” means anything on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

“Rehabilitation” includes alteration, extension and renovation but does not include routine maintenance;

“Related Body” means

- (a) any agency of Akwesasne,
- (b) any corporation in which Akwesasne has a material or controlling interest,
- (c) any partnership in which Akwesasne or another related body of Akwesasne is a partner with a material or controlling interest, or
- (d) a trust of Akwesasne;

“Remuneration” means any salaries, wages, commissions, bonuses, fees, honoraria and dividends and any other monetary and non-monetary benefits;

“Replacement” includes substitution, in whole or in part, with another of Akwesasne’s Tangible Capital Assets;

“Reportable Expenses” includes the costs of transportation, meals, hospitality, and incidental expenses;

“Resolution” means a resolution formally adopted by Council pursuant to its governing authority;

“Senior Financial Officer” means the person appointed by Council under section 18 who is responsible for the day-to-day management of the systems of the Financial Administration of Akwesasne;

“Special Purpose Report” means a report described in section ~~71~~69; and

~~“Standards” means the standards established from time to time under the Act.~~

~~(2) Except as otherwise provided in this Law, words and expressions used in this Law have the same meanings as in the Act.~~

(2) Unless a word or expression is defined under subsection (1) ~~or (2)~~ or another provision of this Law, the definitions in the *Interpretation Act* apply.

- (3) All references to named enactments in this Law are to enactments of the Government of Canada.

### **Interpretation**

**3.(1)** In this Law, the following rules of interpretation apply:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) words importing female persons include male persons and corporations and words importing male persons include female persons and corporations;
- (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 construed as imperative, and the expression “may” is to be construed as permissive;
- (e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”; and
- (f) a reference to an enactment includes any amendment or replacement of it and every regulation made under it.

(2) This Law shall be considered as always speaking and where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to this Law according to its true spirit, intent and meaning.

(3) Words in this Law referring to an Officer, by name of office or otherwise, also apply to any person designated by 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.

### **Posting of Public Notice**

**4.(1)** If a public notice shall be posted under this Law, the public notice is properly posted if a written notice is placed in a conspicuous and accessible place for public viewing on Akwesasne’s Lands.

(2) Unless expressly provided otherwise, if a public notice of a meeting shall be posted under this Law the notice shall be posted at least fifteen (15) days before the date of the meeting.

### **Calculation of Time**

**5.** In this Law, time shall be calculated in accordance with the following rules:

- (a) where the time limited for taking an action ends or falls on a holiday, the action may be taken on the next day that is not a holiday;
- (b) where there is a reference to a number of days, not expressed as “clear days”, between two events, in calculating that number of days the day on which the first event happens is excluded and the day on which the second event happens is included;

- (c) where a time is expressed to begin or end at, on or within a specified day, or to continue to or until a specified day, the time includes that day;
- (d) where a time is expressed to begin after or to be from a specified day, the time does not include that day; and
- (e) where anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

#### **Conflict of Laws**

~~6.(1)~~ If there is a conflict between this Law and another Akwesasne Law, this Law prevails.

~~7.6. If there is a conflict between this Law and the Act, the Act prevails.~~

#### **Scope and Application**

~~8.7.~~ This Law applies to the Financial Administration of Akwesasne.

### **PART III - Administration**

#### ***DIVISION 1 - Council***

#### **Responsibilities of Council**

~~9.8.~~(1) Council is responsible for all matters relating to the Financial Administration of Akwesasne whether or not they have been assigned or delegated to an Officer, employee, committee, contractor or agent by or under this Law.

(2) Subject ~~to paragraph 5(1)(f) of the Act,~~ this Law and any other applicable Akwesasne Law, Council may delegate to any of its Officers, employees, committees, contractors or agents any of its functions under this Law except:

- (a) the approval of Council regulations, policies, procedures or directions respecting Financial Administration;
- (b) the appointment of members, the Chair and the vice-chair of the Finance Committee;
- (c) the approval of Annual Budgets and financial statements of Akwesasne; and
- (d) the approval of borrowing of Akwesasne.

#### **Council Regulations, Policies, Procedures and Directions**

~~10.9.~~(1) Subject to subsection (2), Council may establish regulations, policies and procedures and give directions respecting any matter relating to the Financial Administration of Akwesasne.

(2) Council shall establish regulations, policies or procedures or give directions respecting the acquisition, management and safeguarding of Akwesasne assets.



(3) Council shall not establish any regulations, policies or procedures or give any directions relating to the Financial Administration of Akwesasne that are in conflict with this Law, ~~the Act~~ or GAAP.

(4) Council shall ensure that all human resources regulations, policies and procedures are designed and implemented to facilitate effective internal Financial Administration controls.

(5) Council shall document all its regulations, policies, procedures and directions and make them available to any person who is required to act in accordance with them or who may be directly affected by them.

#### **Reporting of Remuneration and Expenses**

~~11.10.~~ Annually the Senior Financial Officer shall prepare a report separately listing Remuneration paid and Reportable Expenses reimbursed by Akwesasne, and by any Entity, to each ~~member~~ Member of Council whether such amounts are paid to the ~~member~~ Member of Council while acting in that capacity or in any other capacity.

### ***DIVISION 2 - Finance Committee***

#### **Finance Committee Established**

~~12.11.~~(1) The Finance Committee of Akwesasne is established to provide Council with advice and recommendations in order to support Council's decision-making process respecting the Financial Administration of Akwesasne.

(2) Council shall appoint not less than ~~three (3)~~ five (5) members ~~of to~~ the Finance Committee, a majority of whom shall have Financial Competency and all of whom shall be independent.

(3) For purposes of this section, an individual is independent if the individual does not have a direct or indirect financial relationship with the Akwesasne government that could, in the opinion of Council, reasonably interfere with the exercise of independent judgment as a member of the Finance Committee.

(4) Council shall establish policies or procedures or give directions

(a) establishing criteria to determine if an individual is eligible to be a member of the Finance Committee and is independent;

(b) requiring confirmation, before appointment, that each potential member of the Finance Committee is eligible to be a member and is independent; and

(c) requiring each member of the Finance Committee annually to sign a statement confirming that the member continues to meet the criteria referred to in paragraph (a).

(5) If the Finance Committee consists of

~~(a) three (3) members, at least one (1) of the Finance Committee members shall be a member of Council; and~~

(a) four (4) or more members, Five (5), at least two (2) of the Finance Committee members shall be members Members of Council together with three (3) Members of Akwesasne ; and if

(b) Six (6) or more members, three (3) Members of Akwesasne shall be on the Finance Committee and the remaining members of the Finance Committee members shall be Members of Council.

(6) Subject to subsection (7), the Finance Committee members shall be appointed to hold office for staggered terms of not less than three (3) complete Fiscal Years.

(7) A Finance Committee member may be removed from office by Council if the Akwesasne Review Commission determines that the member

- (a) has unexcused absences from three (3) meetings of the Finance Committee;
- (b) has been convicted of an indictable offence in Canada or a felony in the United States;
- (c) has breached this Law;
- (d) has engaged in dishonourable or questionable conduct which casts doubts on their personal or professional integrity or competence, or reflects adversely on the integrity of the Finance Committee;
- (e) is negligent in their duties and responsibilities to the Finance Committee; or
- (f) no longer meets the eligibility requirements.

(8) If a Finance Committee member is removed from office, resigns or dies before the member's term of office expires, Council shall as soon as practicable appoint a new Committee member to hold office for the remainder of the first member's term of office.

#### Chair and Vice-Chair

~~13.12.~~(1) Council shall appoint a Chair and a Vice-Chair of the Finance Committee, at least one of whom shall be a ~~member~~Member of Council.

(2) If Council appoints a non-~~member~~Member of Council as Chair,

- (a) Council shall send to the Chair notices and agendas of all Council meetings;
- (b) on request of the Chair, Council shall provide the Chair with any materials or information provided to Council respecting matters before it; and
- (c) the Chair may attend and speak at Council meetings.

#### Finance Committee Procedures

~~14.13.~~(1) The quorum of the Finance Committee is fifty percent (50%) of the total number of Finance Committee members, including at least one (1) ~~member~~Member of Council.

(2) Except where a Finance Committee member is not permitted to participate in a decision because of a conflict of interest, every Finance Committee member has one (1) vote in all Finance Committee decisions.

(3) In the event of a tie vote in the Finance Committee, the Chair may cast a second tiebreaking vote.

(4) Subject to subsection (5), the Executive Director and the Senior Financial Officer shall be notified of all Finance Committee meetings and, subject to reasonable exceptions, shall attend those meetings.

(5) The Executive Director or the Senior Financial Officer may be excluded from all or any part of a Finance Committee meeting by a recorded vote if

(a) the subject matter relates to a confidential personnel or performance issue respecting the Executive Director or the Senior Financial Officer; or

(b) it is a meeting with the Auditor.

(6) The Finance Committee shall meet

(a) at least once every quarter in each Fiscal Year as necessary to conduct the business of the Finance Committee; and

(b) as soon as ~~practical~~practicable after it receives the audited Annual Financial Statements and report from the Auditor.

(7) The Finance Committee shall provide minutes of its meetings to Council and report to Council on the substance of each Finance Committee meeting as soon as practicable after each meeting.

(8) The Finance Committee shall post a public notice to Members of Akwesasne at least ten (10) days before each meeting specifying :

(a) the time, date and place of the meeting; and

(b) the agenda or general subject matter of the meeting.

(9) At the beginning of every Finance Committee meeting thirty (30) minutes or such longer time as Finance Committee allocate shall be allowed for Members of Akwesasne to ask questions or make submissions.

(10) The following information need not be disclosed to Members of Akwesasne at the meeting if the Finance Committee determines disclosure inappropriate :

(a) receipt of advice that is subject to solicitor /client privilege;

(b) litigation or potential litigation ;

(c) personal information about an individual ; and

(d) information which is or would be protected from disclosure under applicable law.

~~(8)~~(11) Subject to this Law and any directions given by Council, the Finance Committee may make rules for the conduct of its meetings.

| ~~(9)~~(12) The Finance Committee may consult with Akwesasne employees, working groups and committees as it deems necessary.

| ~~(10)~~(13) ~~(10)~~ After consultation with the Executive Director, the Finance Committee may retain a consultant to assist in the performance of any of its responsibilities.

#### **Financial Planning Responsibilities**

| ~~15.14~~(1) The Finance Committee shall carry out the following activities in respect of the Financial Administration of Akwesasne:

- (a) annually review, and recommend to Council for approval, the Multi-Year Financial Plan;
- (b) review draft Annual Budgets and recommend them to Council for approval;
- (c) on an ongoing basis, monitor the financial performance of Akwesasne against the Annual Budget and report any significant variations to Council; and
- (d) review the quarterly financial statements and recommend them to Council for approval.

(2) The Finance Committee may make a report or recommendations to Council on any matter respecting the Financial Administration of Akwesasne that is not otherwise specified to be its responsibility under this Law.

#### **Audit Responsibilities**

| ~~16.15~~. The Finance Committee shall carry out the following audit activities in respect of the Financial Administration of Akwesasne:

- (a) make recommendations to Council on the selection, engagement and performance of an Auditor;
- (b) receive assurances on the independence of a proposed or appointed Auditor;
- (c) review and make recommendations to Council on the planning, conduct and results of audit activities;
- (d) review and make recommendations to Council on the audited Annual Financial Statements, including any Special Purpose Reports;
- (e) periodically review and make recommendations to Council on regulations, policies, procedures and directions on reimbursable expenses and benefits of the ~~members~~Members of Council, Officers and employees of Akwesasne;
- (f) monitor financial reporting risks and fraud risks and the effectiveness of mitigating controls for those risks taking into consideration the cost of implementing those controls;
- (g) conduct a review of this Law under section ~~9893~~ and, where appropriate, recommend amendments to Council; and
- (h) periodically review and make recommendations to Council on the terms of reference of the Finance Committee.

### **Council Assigned Responsibilities**

**17.16.** Council may assign to the Finance Committee or another committee of Council the following activities in respect of the Financial Administration of Akwesasne:

- (a) to develop, and recommend to Council for approval, performance measurements and goals designed to confirm that management activities, including financial management, occur as planned;
- (b) to prepare, and recommend to Council for approval, cash management plans;
- (c) to review and report to Council on the financial content of any Akwesasne reports;
- (d) to review, monitor and report to Council on the appropriateness of Akwesasne's accounting and financial reporting systems, regulations, policies and practices;
- (e) to review, and recommend to Council for approval, any proposed significant changes in Akwesasne's accounting or financial reporting systems, regulations, policies, procedures or directions;
- (f) to monitor the collection and receipt of Akwesasne's Financial Assets, including debts owed to Akwesasne;
- (g) to review and report to Council on Akwesasne's risk management policies and control and information systems and, where appropriate, recommend improvements to Council;
- (h) to review the adequacy of security of information, information systems and recovery plans and, where appropriate, recommend improvements to Council;
- (i) to monitor compliance with the legal obligations of Akwesasne, including legislative, regulatory and contractual obligations, and report to Council;
- (j) to review and report to Council on the adequacy of Financial Administration personnel and resources;
- (k) to review, monitor and report to Council on the adequacy and appropriateness of Akwesasne's insurance coverage respecting significant risks to Akwesasne; and
- (l) to review, monitor and report to Council on material litigation and its impact on Financial Administration and reporting.

### ***DIVISION 3 - Officers and Employees***

#### **Executive Director**

**18.17.**(1) Council shall appoint a person as Executive Director of Akwesasne and may set the terms and conditions of that appointment.

(2) The Executive Director shall report to the Council and is responsible for leading the planning, organization, implementation and evaluation of the overall management of all the day-to-day operations of Akwesasne, including the following duties:

- (a) to develop and recommend to Council for approval, human resources policies and procedures for the hiring, management and dismissal of Officers and employees of Akwesasne;
- (b) to prepare and recommend to Council for approval, descriptions of the powers, duties and functions of all employees of Akwesasne;
- (c) to hire the employees of Akwesasne, as the Executive Director considers necessary, and to set the terms and conditions of their employment;
- (d) to oversee, supervise and direct the activities of all Officers and employees of Akwesasne;
- (e) to oversee and administer the contracts of Akwesasne;
- (f) to prepare, recommend to Council and maintain and revise as necessary the organization chart referred to in section 19;
- (g) to identify, assess, monitor and report on financial reporting risks and fraud risks;
- (h) to monitor and report on the effectiveness of mitigating controls for the risks referred to in paragraph (g) taking into consideration the cost of implementing those controls;
- (i) to perform any other duties of the Executive Director under this Law; and
- (j) to carry out any other activities specified by Council that are not ~~contrary to the Act or~~ inconsistent with the Executive Director's duties specified in this Law.

(3) The Executive Director may assign the performance of any of the Executive Director's duties or functions

- (a) to an Officer or employee of Akwesasne; and
- (b) with the approval of Council, to a contractor or agent of Akwesasne.

(4) Any assignment of duties or functions under subsection (3) does not relieve the Executive Director of the responsibility to ensure that these duties or functions are carried out properly.

#### **Senior Financial Officer**

~~19.18.~~(1) Council shall appoint a person as Senior Financial Officer of Akwesasne and may set the terms and conditions of that appointment.

(2) The Senior Financial Officer shall report to the Executive Director and is responsible for the day-to-day management of the systems of the Financial Administration of Akwesasne, including the following duties:

- (a) to ensure the Financial Administration systems, regulations, policies, procedures, directions and internal controls are appropriately designed and operating effectively;
- (b) to administer and maintain all charts of accounts of Akwesasne;
- (c) to prepare the draft Annual Budgets;

- (d) to prepare the monthly financial information required in section ~~6866~~, the quarterly financial statements required in section ~~6967~~ and the draft Annual Financial Statements required in section ~~7069~~;
- (e) to prepare the financial components of reports to Council and of the Multi-Year Financial Plan;
- (f) to actively monitor compliance with any agreements and funding arrangements entered into by Akwesasne;
- (g) to administer and supervise the preparation and maintenance of Financial Records and the Financial Administration reporting systems;
- (h) to administer and supervise the maintenance of the Records of all receipts and expenditures of Akwesasne to facilitate the annual audit;
- (i) to actively monitor compliance with ~~the Act~~, this Law, any other applicable Akwesasne Law, applicable Standards Canadian accounting standards, requirements in funding agreements and any regulations, policies, procedures and directions of Council respecting the Financial Administration of Akwesasne;
- (j) to prepare or provide any documentation and financial information required by Council or the Finance Committee to discharge its responsibilities;
- (k) to evaluate the Financial Administration systems of Akwesasne and recommend improvements;
- (l) to develop and recommend procedures for the safeguarding of assets and to ensure approved procedures are followed;
- (m) to develop and recommend to Council procedures for identifying and mitigating financial reporting and fraud risks and to ensure approved procedures are followed;
- (n) to perform any other duties of the Senior Financial Officer under this Law; and
- (o) to carry out any other activities specified by the Executive Director that are not ~~contrary to the Act or~~ inconsistent with the Senior Financial Officer's duties under this Law.

(3) With the approval of the Executive Director, the Senior Financial Officer may assign the performance of any of the duties or functions of the Senior Financial Officer to any Officer, employee, contractor or agent of Akwesasne, but this assignment does not relieve the Senior Financial Officer of the responsibility to ensure that these duties or functions are carried out properly.

### Organizational Structure

~~20.19.~~(1) Council shall establish and maintain a current organization chart for the governance, management and administrative systems of Akwesasne.

(2) The organization chart under subsection (1) shall include the following information:

- (a) all governance, management and administrative systems of Akwesasne;
- (b) the organization of the systems described in paragraph (a), including the linkages between them;

(c) the specific roles and responsibilities of each level of the organization of the systems described in paragraph (a); and

(d) all governance, management and administrative positions at each level of the organization of the systems described in paragraph (a), including

(i) the membership on Council, Finance Committee and all other committees of Council and Akwesasne,

(ii) the Executive Director, the Senior Financial Officer, and other Officers of Akwesasne, and

(iii) the principal lines of authority and the responsibility between Council, the committees referred to in subparagraph (i) and the Officers referred to in subparagraph (ii).

(3) On request, the Executive Director shall provide a copy of the organization chart under subsection (1) to a ~~member~~Member of Council, a member of a committee referred to in subparagraph (2)(d)(i), an Officer, employee or contractor or agent of Akwesasne and a Member.

(4) In the course of discharging ~~his or her~~their responsibilities under this Law, the Executive Director

(a) shall recommend to Council for approval and implementation human resource policies that facilitate effective internal Financial Administration controls; and

(b) may issue administrative directives that comply with the human resources policies approved by Council in accordance with paragraph (a), as ~~he or she deems~~they deem necessary.

(5) Council shall take all reasonable steps to ensure that Akwesasne hires or retains qualified and competent personnel to carry out the Financial Administration activities of Akwesasne.

#### ***DIVISION 4 - Conduct Expectations***

##### **Conduct of Members of Council**

~~21.20.~~ When exercising a power, duty or responsibility relating to the Financial Administration of Akwesasne, ~~members~~Members of Council shall

(a) comply with this Law, ~~the Act,~~any other applicable Akwesasne Law and ~~any applicable Standards;requirements in funding agreements.~~

(b) act honestly, conscientiously, in good faith and in the best interests of Akwesasne;

(c) exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances;

(d) fulfill their oath of office and conduct themselves in a respectful manner to faithfully, honestly and conscientiously serve Akwesasne;

(e) conduct themselves with integrity and in a manner that will maintain and enhance respect for Council and for Akwesasne;

(f) refrain from the consumption of alcohol or drugs (other than for medical purposes) during the work day;



- (g) perform their duties courteously; and
- (h) avoid conflicts of interest or the appearance of a conflict of interest and comply with the requirements of the Schedule to this Law, including required annual disclosures of private interests.

#### Contraventions by Members of Council

~~22.21.~~ (1) If it has been determined by the Akwesasne Court that a ~~member~~Member of Council has contravened section 20,

- (a) Council may remove the ~~member~~Member of Council from their position on the Finance Committee, if applicable;
- (b) the ~~member~~Member of Council is liable on conviction to a fine not exceeding five thousand dollars (\$5000); and
- (c) where there is a contravention of the conflict of interest rules in the Schedule, the Akwesasne Court may, on conviction under paragraph (b) or on application of Council or any Member, do one or more of the following:
  - (i) order the ~~member~~Member of Council to repay any benefits received from the transaction,
  - (ii) prohibit Council from entering into the transaction,
  - (iii) set aside the transaction, or
  - (iv) ~~(iv)~~ — make any other order it deems appropriate in relation to the transaction.

(2) If it has been determined by the Akwesasne Court that a Member of Council has contravened this section, the Council must post a public notice of the details of the determination for a period of not less than thirty-one (31) days as soon as practicable after the contravention was determined.

#### Conduct of Officers, Employees, Contractors and Agents.

~~23.22.~~ (1) This section applies to

- (a) an Officer, employee, contractor and agent of Akwesasne;
- (b) a person acting under the delegated authority of Council or Akwesasne; or
- (c) a member of a committee of Council or Akwesasne who is not a ~~member~~Member of Council.

(2) If a person is exercising a power, duty or responsibility relating to the Financial Administration of Akwesasne, that person shall

- (a) comply with this Law, ~~the Act,~~ any other applicable Akwesasne Law and ~~any applicable Standards; requirements in funding agreements.~~
- (b) comply with all regulations, policies, procedures and directions of Council; and
- (c) avoid conflicts of interest and comply with any applicable requirements of the Schedule to this Law, including required disclosure of potential conflicts of interest.

(3) Council shall incorporate the relevant provision of this section into

- (a) the terms of employment or appointment of every Officer or employee of Akwesasne;
- (b) the terms of every contract of a contractor of Akwesasne;
- (c) the terms of appointment of every member of a committee who is not a ~~member~~Member of Council; and
- (d) the terms of appointment of every agent of Akwesasne.

#### **Contraventions by Officers, Employees, Contractors and Agents**

~~24.23.~~ If a person contravenes ~~sections~~subsection 22;(2), the following actions may be taken:

- (a) an Officer or employee may be disciplined, including dismissal;
- (b) a contractor's contract may be terminated;
- (c) the appointment of a member of a committee may be revoked;
- (d) the appointment of an agent may be revoked; and
- (e) where there is a contravention of the conflict of interest rules in the Schedule, the Akwesasne Court may, on application by Council or any Member, do one or more of the following:
  - (i) order the ~~member of Council~~person to repay any benefits received from the transaction,
  - (ii) prohibit Council ~~or the person~~ from entering into the transaction,
  - (iii) set aside the transaction, or
  - (iv) make any other order it deems appropriate in relation to the transaction.

### **PART IV - Financial Management**

#### ***DIVISION 1 - Financial Plans and Annual Budgets***

##### **Fiscal Year**

~~25.24.~~ The Fiscal Year of Akwesasne is April 1 to March 31 of the following year.

##### **Multi-year Financial Plan**

~~26.25.~~ No later than March 31 of each year, Council shall approve a Multi-Year Financial Plan that

- (a) has a planning period of five (5) years comprised of the current Fiscal Year and the four (4) succeeding Fiscal Years;
- (b) is based on the projections of revenues, expenditures and transfers between accounts;
- (c) sets out projected revenues, segregated by significant category;

- (d) sets out projected expenditures, segregated by significant category;
- (e) in respect of transfers between accounts, sets out the amounts from the tangible capital asset reserve account;
- (f) shows all categories of restricted cash; and
- (g) indicates whether in any of the five (5) years of the plan a deficit or surplus is expected from the projection of revenues and expenditures for that year.

#### **Content of Annual Budget**

~~27.~~26. The Annual Budget shall encompass all the operations for which Akwesasne is responsible and shall identify

- (a) anticipated revenues, segregated by significant category, with estimates of the amount of revenue from each category;
- (b) anticipated expenditures, segregated by significant category, with estimates of the amount of expenditure for each category; and
- (c) any anticipated annual and accumulated surplus or annual and accumulated deficit and the application of year-end surplus.

#### **Annual Budget and Planning Process Schedule**

~~28.~~27.(1) On or before January 31 of each year, the Senior Financial Officer shall prepare and submit to the Finance Committee for review a draft annual budget and a draft multi-year financial plan for the next Fiscal Year.

(2) On or before February 15 of each year, the Finance Committee shall review

- (a) the draft annual budget and recommend an annual budget to Council for approval; and
- (b) the draft multi-year financial plan and recommend a Multi-Year Financial Plan to Council.

(3) On or before March 31 of each year, Council shall review and approve the annual budget for Akwesasne for the next Fiscal Year.

#### **Additional Requirements for Annual Budget Deficits**

~~29.~~28. If a draft annual budget contains a proposed deficit, Council shall ensure that

- (a) the Multi-Year Financial Plan of Akwesasne demonstrates how and when this deficit will be addressed and how it will be serviced; and
- (b) the deficit does not have a negative impact on the credit worthiness of Akwesasne.

#### **Amendments to Annual Budgets**

~~30.~~29.(1) The Annual Budget of Akwesasne shall not be changed without the approval of Council.

(2) Subject to section 36, unless there is a substantial change in the forecasted revenues or expenses of Akwesasne or in the expenditure priorities of Council, Council shall not approve a change to the Annual Budget of Akwesasne.

(3) For clarity, transfers of revenues and expenditures within and between programs and ~~department~~departments during the Fiscal Year do not require an amendment to the Annual Budget, so long as they do not result in a net change to the Annual Budget.

#### Informing and Involving Members of Akwesasne

~~31.30.~~30.(1) Council shall post a public notice of each Council meeting when each of the following is presented for Council approval:

- (a) the Multi-Year Financial Plan;
- (b) the Annual Budget;
- (c) an amendment to the Annual Budget;
- (d) Annual Budget deficits or extraordinary expenditures;
- (e) Capital Projects;
- (f) borrowing for new Capital Projects; and
- (g) proposed amendments to this Law.

(2) A notice provided under subsection (1) shall state whether Members may attend that portion of the Council meeting where the matters in ~~paragraphs~~paragraph (1)(a), (b), (c) or (d) are under consideration.

(3) Upon approval of any matters described in subsection 30 (1) Council shall schedule an Information Meeting to be held within thirty ( 30 ) days of approval for the purpose of informing Members of Akwesasne about the matters approved.

(4) Notice of the Information Meeting shall be posted in a public place in Akwesasne at least ten (10) days before the meeting specifying :

(i) the time , date and place of the meeting; and

(ii) the agenda or general nature of matters to be presented at the meeting.

(5) The following information need not be disclosed to Members of Akwesasne at the Information meeting if the Council determines disclosure inappropriate :

(h) receipt of advice that is subject to solicitor /client privilege;

(i) litigation or potential litigation ;

(j) personal information about an individual ; and

(k) information which is or would be protected from disclosure under applicable law.

## ***DIVISION 2 - Financial Institution Accounts***

### **Financial Institution Accounts**

~~32.31~~31(1) No account may be opened for the receipt and deposit of money of Akwesasne unless the account is

- (a) in the name of Akwesasne;
- (b) opened in a Financial Institution; and
- (c) authorized by Council.

(2) Akwesasne shall establish the following accounts in a Financial Institution:

- (a) a general account for money from any sources other than those described in paragraphs (b) and (c);
- (b) a trust account if Akwesasne has money held in trust; and
- (c) a tangible capital asset reserve account for money set aside for purposes of section ~~8582~~.

(3) Akwesasne may establish any other accounts not referred to in subsection (2) as may be necessary and appropriate to manage Akwesasne's Financial Assets.

### **Accounts Management**

~~33.32~~32(1) The Senior Financial Officer shall ensure the safekeeping of all money received by Akwesasne.

(2) The Senior Financial Officer

- (a) shall deposit all money received by Akwesasne as soon as practicable into the appropriate accounts described in section 31; and
- (b) shall not authorize payment of money from an account described in section 31 unless the payment relates to the subject matter for which the account was established and is otherwise authorized or permitted under this Law.

## ***DIVISION 3 - Expenditures***

### **Prohibited Expenditures**

~~34.33~~33(1) Money or financial assets in a trust account shall not be used for a purpose other than that permitted under the terms of the trust.

(2) Money in a tangible capital asset reserve account shall not be used for any purpose other than that described in Part V.

#### **Prohibited Agreements**

~~35.~~34. Akwesasne shall not enter into an agreement or undertaking that requires Akwesasne to expend money that is not authorized by or that contravenes this Law.

#### **No Expenditure Without Appropriation**

~~36.~~35.(1) Subject to subsection 36(1), money shall not be paid out of any account unless the expenditure is authorized under an Appropriation.

(2) Subsection (1) does not apply to expenditures from a trust account where the expenditure is authorized under the terms of the trust.

#### **Emergency Expenditures**

~~37.~~36.(1) The Executive Director may approve expenditure for an emergency purpose that was not anticipated in the Annual Budget if the expenditure is not expressly prohibited by or under this Law or another Akwesasne Law.

(2) Council shall establish regulations, policies and procedures to authorize expenditures under subsection (1).

(3) The expenditure under subsection (1) shall be reported to Council as soon as practicable and Council shall amend the Annual Budget to include the expenditure.

(4) Subsection (1) does not give the Executive Director the authority to borrow for ~~the purpose of~~ making an expenditure for an emergency purpose.

#### **Appropriations**

~~38.~~37.(1) An amount that is appropriated in an Annual Budget shall not be expended for any purpose other than that described in the Appropriation.

(2) The total amount expended by Akwesasne in relation to an Appropriation shall not exceed the amount specified in the Annual Budget for Akwesasne for that Appropriation.

(3) Every person who is responsible for managing an Appropriation shall establish and maintain a current Record of commitments chargeable to that Appropriation.

#### **Payments after Fiscal Year-end**

~~39.~~38.(1) Money appropriated in an Annual Budget for a Fiscal Year shall not be expended after the end of the Fiscal Year except to discharge a liability incurred in that Fiscal Year.

(2) If the liabilities for an Appropriation under subsection (1) exceed the unexpended balance of the Appropriation at the end of the Fiscal Year, the excess shall be

(a) charged against a suitable Appropriation for the following Fiscal Year; and

- (b) reported in the financial statements for the Fiscal Year in which the liability was incurred.

#### **Requisitions for Payment**

~~40.39.~~(1) No money may be paid out of any account without a requisition for payment as required under this section.

(2) No requisition may be made or given for a payment of money unless it is a lawful charge against an Appropriation or an authorized use of money in a trust.

(3) No requisition may be made or given for payment of money that results in expenditures from a trust account in excess of the unexpended balance of the trust account.

(4) No requisition may be made or given for payment of money that reduces the balance available in an Appropriation or trust account so that it is not sufficient to meet the commitments chargeable against it.

(5) A requisition may apply to one or more expenditures chargeable against one or more Appropriations.

(6) A requisition shall identify the Appropriation or trust account out of which payment is to be made and shall include a statement certifying that the expenditure is not prohibited under this section and that it is

- (a) in accordance with the Appropriation identified in the certified statement; or
- (b) allowed without the authority of an Appropriation under this Law.

(7) If a requisition is for the payment of performance of work or services or the supply of goods, the requisition shall include a statement certifying that

- (a) the work or services have been performed or the goods supplied, any conditions in an agreement respecting the work, services or goods have been met and the price charged or amount to be paid is in accordance with an agreement or, if not specified by agreement, is reasonable; or
- (b) if payment is to be made before completion of the work or services, delivery of the goods or satisfaction of any conditions in an agreement, the payment is in accordance with the agreement.

(8) The Executive Director, Senior Financial Officer or such other person authorized under Akwesasne policy, by Resolution, or in accordance with the terms of the trust, shall authorize payment out of, or sign a requisition for payment from, a trust account.

(9) The Executive Director, Senior Financial Officer or such other person authorized under Akwesasne policy or by Resolution may authorize a payment out of, or sign a requisition for payment from, any Appropriation.

(10) Subject to subsection (8), a person who is responsible for managing an Appropriation may authorize payment out of, or sign a requisition for payment from, the Appropriation.

### Form of Payment

~~41.40.~~ Payments by Akwesasne may be made by cheque, draft, electronic transfer or other similar instrument signed by any two (2) of the persons referred to in subsection 39(9).

## ***DIVISION 4 - General Matters***

### Advances

~~42.41.~~ The Executive Director, Senior Financial Officer or such other person authorized under Akwesasne policy or by Resolution may approve an advance to prepay expenses that are chargeable against an Appropriation in the current Fiscal Year or an Appropriation in the next Fiscal Year.

### Holdbacks

~~43.42.~~ If Akwesasne withholds an amount payable under an agreement, the payment of the amount withheld shall be charged to the Appropriation from which the agreement shall be paid even if the Fiscal Year for which it was appropriated has ended.

### Deposit Money

~~44.43.~~(1) Money received by Akwesasne as a deposit to ensure the doing of any act or thing shall be held and disposed of in accordance with

- (a) the agreement under which the deposit has been paid; or
- (b) in the absence of any provisions respecting that matter, any policy or directions of Council.

(2) Council shall make regulations, policies or procedures or give directions in respect of the disposition of deposit money referred to in subsection (1).

### Interest

~~45.44.~~(1) All interest earned on the accounts described in subsection 31(2); other than a trust account; or tangible capital asset reserve account shall be deposited in the general account referred to in paragraph 31(2)(a).

(3) All interest earned on

- (a) a trust account shall be retained in that account; and
- (b) the tangible capital asset reserve account shall be retained in that account.

(4) Subject to the *Interest Act*, Akwesasne may charge interest at a rate set from time to time by Council on any debts or payments owed to Akwesasne that are overdue.

### Refunds

~~46.45.~~(1) Money received by Akwesasne that is paid or collected in error or for a purpose that is not fulfilled may be refunded in full or in part as circumstances require.



(2) Council shall establish policies and procedures respecting the refund of money under subsection (1).

#### **Write-Off or Extinguishment of Debts**

~~47.46.~~ All or part of a debt or obligation owed to Akwesasne may be written off or forgiven

- (a) if approved by Council; or
- (b) if done under the authority of a policy or direction of Council.

#### **Year-end Surplus**

~~48.47.~~(1) Subject to subsection (2) and to the terms of any applicable funding agreements, an operating surplus at the end of the Fiscal Year shall be paid into the general account described in paragraph 31(2)(a).

(2) An operating surplus in the tangible capital asset reserve account at the end of the Fiscal Year shall be retained in that account.

### ***DIVISION 5 - Borrowing by Council***

#### **Limitations on Borrowing by Council**

~~49.48.~~(1) Except as specifically authorized in this Law ~~or in a law made under paragraph 5(1)(d) of the Act~~, Akwesasne shall not borrow money or grant security.

(2) Subject to this Law, if Akwesasne is authorized in this Law to borrow money or grant security, Council may authorize the Executive Director to borrow money or grant security in the name of Akwesasne as specifically approved by Resolution.

#### **Borrowing for Ordinary Operations**

~~50.49.~~(1) Akwesasne may incur trade accounts or other current liabilities payable within normal terms of trade for expenditures provided for in the Annual Budget for the Fiscal Year if the debt will be repaid from money appropriated under an Appropriation for the Fiscal Year or is in respect of an expenditure that may be made without the authority of an Appropriation under this Law.

(2) Akwesasne may enter into agreements with Financial Institutions for overdrafts or lines of credit and, for the purpose of securing any overdrafts or lines of credit, may grant security to the Financial Institution in a form, amount, and on terms and conditions that Council approves by Resolution.

(3) Akwesasne may enter into a general security agreement or a lease for the use or acquisition of lands, materials or equipment required for the operation, management or administration of Akwesasne.

#### **Financial Agreements**

~~51.50.~~(1) Subject to subsection (2), Akwesasne may enter into the following agreements in the name of Akwesasne:

- (a) for the purpose of efficient management of Akwesasne's Financial Assets, agreements with Financial Institutions and related services agreements; and

(b) for the purpose of reducing risks or maximizing benefits in relation to the borrowing, lending or investing of Akwesasne's Financial Assets, agreements with Financial Institutions respecting currency exchange, spot and future currency, interest rate exchange and future interest rates.

(2) Any proposed agreement under subsection (1) shall be authorized by Resolution and executed in accordance with the directions in the Resolution.

#### **Borrowing for Authorized Expenditures**

~~52.~~51.(1) If the general account described in paragraph 31(2)(a) is not sufficient to meet the expenditures authorized to be made from it, and the Executive Director and the Senior Financial Officer recommend that money be borrowed to ensure that the general account is sufficient for these purposes, Akwesasne may borrow an amount not exceeding a maximum amount specified by Resolution and to be repaid within a specified period of time.

(2) Despite the repayment terms specified in subsection (1), if the money borrowed under subsection (1) is no longer required for the purpose for which it was borrowed, the money shall be repaid as soon as possible.

#### **~~Borrowing Member Requirements~~**

~~53. Money borrowed by Akwesasne from the FNFA that is secured by Other Revenues may only be used for the purposes set out in section 4 of the *Financing Secured by Other Revenues Regulations* made under the Act.~~

#### **Borrowing for Repayment of Debts**

~~54.~~52. Subject to this Law ~~and a law made under paragraph 5(1)(d) of the Act~~, Akwesasne may borrow money that is required for the repayment or refinancing of any debt of Akwesasne, other than a debt in relation to money borrowed under subsection 51(1).

#### **Use of Borrowed Money**

~~55.~~53.(1) Subject to this section ~~and any law made under paragraph 5(1)(d) of the Act~~, money borrowed by Akwesasne for a specific purpose shall not be used for any other purpose.

(2) All or some of the money borrowed for a specific purpose by Akwesasne and not required to be used immediately for that purpose may be temporarily invested under subsection ~~60~~59(1) until required for that purpose.

(3) If some of the money borrowed for a specific purpose is no longer required for that purpose, that money shall be applied to repay the money borrowed.

#### **Execution of Security Documents**

~~56.~~54. A security granted by Akwesasne shall be signed by such persons as identified in the Resolution approving the granting of a security.

## Operational Controls

~~57.55.~~ Council shall establish regulations, policies or procedures or give directions respecting the establishment and implementation of an effective system of internal controls that ensures the orderly and efficient conduct of Akwesasne's operations.

## ***DIVISION 6 - Risk Management***

### Limitation on Business Activity

~~58.56.~~(1) Subject to subsections (2) and (3), Akwesasne shall not

- (a) carry on business as a proprietor;
- (b) acquire an interest in a partnership as a general partner; or
- (c) act as a trustee respecting property used for, or held in the course of, carrying on a business.

(2) Akwesasne may carry on a business that

- (a) is ancillary or incidental to the provision of programs or services or other functions of Akwesasne governance; or
- (b) derives income from the granting of a lease or licence of or is in respect of
  - (i) an interest in, or Natural Resources on or under, Akwesasne's Lands or lands owned in fee simple by, or in trust for, Akwesasne, or
  - (ii) any other property of Akwesasne.

(3) Akwesasne may carry on business activities for the primary purpose of profit if Council determines that the business activities

- (a) do not result in a material liability for Akwesasne; or
- (b) do not otherwise expose Akwesasne's Financial Assets, property or resources to significant risk.

(4) Council may impose terms and conditions on the conduct of any business activity permitted under this section in order to manage any risks associated with that activity.

### Guarantees and Indemnities

~~59.57.~~(1) Akwesasne shall not give a guarantee unless Council has considered the report of the Senior Financial Officer under subsection (2).

(2) Before Council authorizes a guarantee under subsection (1), the Senior Financial Officer shall prepare a report for Council identifying any risks associated with giving the guarantee and assessing the ability of Akwesasne to honour the guarantee should it be required to do so.

(3) Akwesasne shall not give an indemnity unless it is

- (a) authorized under section ~~97~~92;

- (b) necessary and incidental to and included in another agreement to which Akwesasne is a party; or
- (c) in relation to a security granted by Akwesasne that is authorized under this Law or another Akwesasne Law.

(4) Subject to a Resolution described in section ~~97~~92, Council shall make laws, regulations, policies or directions respecting guarantees and indemnities as follows:

- (a) specifying circumstances under which an indemnity may be given without Council approval;
- (b) designating the persons who may give an indemnity on behalf of Akwesasne and specifying the maximum amount of any indemnity which may be given by them;
- (c) specifying any terms or conditions under which a guarantee or indemnity may be given; and
- (d) specifying the Records to be maintained of all guarantees and indemnities given by Akwesasne.

#### Authority to Invest

~~60-58~~(1) Except as specifically authorized in this Law or another Akwesasne Law, Akwesasne shall not invest Akwesasne's Financial Assets.

(2) If Akwesasne is authorized in this Law to invest Akwesasne's Financial Assets, Council may authorize the investment of Akwesasne's Financial Assets

- (a) as specifically approved by Council; or
- (b) in accordance with the regulations, policies, procedures or directions made by Council.

#### Approved Investments

~~61-59~~(1) Money in an account described in section 31 that is not immediately required for expenditures may be invested by Akwesasne in one or more of the following:

- (a) securities issued or guaranteed by Canada, a province or the United States of America;
- (b) fixed deposits, notes, certificates and other short-term paper of, or guaranteed by, a Financial Institution, including swaps in United States of America currency;
- (c) securities issued ~~by the FNEA or~~ by a local, municipal or regional government in Canada;
- (d) commercial paper issued by a Canadian company that is rated in the highest category by at least two (2) recognized security-rating institutions;
- (e) any investments a trustee may make under an enactment of a province relating to trustees; ~~or,~~
- ~~(f) any other investments or class of investments prescribed by a regulation under the Act.~~

(2) Subject to the terms of the trust, money held in trust that is not immediately required for expenditures may be invested by Akwesasne as permitted under the terms of the trust.

(3) If Akwesasne has established an investment account under section 31, Akwesasne may invest money in that account in

- (a) a company that is incorporated under the laws of Canada or of a province or territory and in which Akwesasne is a shareholder;
- (b) a trust in which Akwesasne is a beneficiary;
- (c) a limited partnership in which Akwesasne is a partner;
- (d) securities issued ~~by the FNFA or~~ by a local, municipal or regional government in Canada; or
- (e) a Member investment program described in section ~~64~~60.

(4) Despite any other provision in this section, Akwesasne may only invest government transfer funds in the following investments specified in paragraph 82(3)(a)-(d):

- (a) securities issued or guaranteed by Canada or a province;
- (b) securities of the Act and in a local, municipal or regional government in Canada;
- (c) investments guaranteed by a bank, trust company or credit union;
- (d) deposits in a bank or trust company in Canada or non-equity or membership shares in a credit union; or
- ~~(f)(e)~~ investments in securities issued ~~by the FNFA or~~ by a municipal finance authority established by a province;
- ~~(g) government transfer funds; and~~
- ~~(h) Other Revenues, if Akwesasne has a loan from the FNFA secured by Other Revenues.~~

#### Permitted Investments in Member Activities

~~62.60.~~(1) Akwesasne may only make a loan to a Member, or to a corporation, partnership or joint venture in which a Member has an interest, if the loan is made from a program of Akwesasne that has been approved by Council and that meets the requirements of this section.

(2) Before Council establishes a program under this section, the Senior Financial Officer shall prepare a report for Council identifying any risks associated with the program and the costs of administering the program.

(3) A program referred to in subsection (1) shall satisfy the following criteria:

- (a) the program shall be universally available to all Members;
- (b) the terms and conditions of the program shall be published and accessible to all Members;
- (c) all loans made from the program and all payments received from those loans shall be set out in an annual report that includes details about

- (i) the ~~aggregate~~ amounts loaned,
- (ii) the purposes of the loans,
- (iii) subject to applicable privacy laws, the names of those receiving a loan, and
- (iv) repayments of principal and interest on the loans; and

(d) all loans shall be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

(4) Council shall make regulations, policies or procedures or give directions for the operation of the program referred to in this section.

#### **Administration of Investments and Loans**

~~63.61~~(1) If Council has authorized the making of an investment or loan under this Law, the Senior Financial Officer shall do all things necessary or advisable for the purpose of making, continuing, exchanging or disposing of the investment or loan.

(2) If Akwesasne is authorized to make a loan under this Law, Council shall establish regulations, policies or procedures or give directions respecting the terms and conditions under which loans may be made, including a requirement that all loans be recorded in a written agreement that provides for proper security for repayment and sets out the terms for repayment of principal and interest.

#### **Risk Assessment and Management**

~~64.62~~(1) Annually, and more often if necessary, the Executive Director shall identify and assess any significant risks to Akwesasne's Financial Assets, Akwesasne's Tangible Capital Assets, and the operations of Akwesasne.

(2) Annually, and more often if necessary, the Executive Director shall report to the Finance Committee on proposed plans to mitigate the risks identified in subsection (1) or, where appropriate, to manage or transfer those risks by agreement with others or by purchasing insurance.

#### **Insurance**

~~65.63~~(1) On recommendation of the Finance Committee, Council shall procure and maintain in force all insurance coverage that is appropriate and commensurate with the risks identified in section ~~63.62~~ and any other risks associated with any assets, property or resources under the care or control of Akwesasne.

(2) Council may purchase and maintain insurance for the benefit of a ~~member~~Member of Council or an Officer or their personal representatives against any liability arising from that person being or having been a ~~member~~Member of Council or an Officer.

#### **Fraud Risks**

~~66.64~~ Council shall establish procedures for the identification and assessment of the following types of potential fraud:

- (a) intentional acts in financial reporting that are designed to deceive the users of the financial reports, and which may result in a material ~~omissions~~omission from or misstatements of financial reports;
- (b) intentional acts in non-financial reporting that are designed to deceive the users of the non-financial reports;
- (c) thefts of Akwesasne's assets in circumstances where the thefts may result in a material omissions from or misstatements in financial reports; and
- (d) corruption and illegal acts.

### ***DIVISION 7 - Financial Reporting***

#### **GAAP**

~~67.65.~~ All accounting practices of Akwesasne shall comply with GAAP.

#### **~~Separate Accounting~~**

~~68. If Akwesasne has a loan from the FNFA that is secured by Other Revenues, the senior financial Officer must~~

- ~~(a) account for all Other Revenues of Akwesasne separately from other moneys of Akwesasne; and~~
- ~~(b) provide the FNFA or the FMB, on its request, with accounting information respecting the Other Revenues.~~

#### **Monthly Financial Information**

~~69.66.~~(1) At the end of each month, the Senior Financial Officer shall prepare financial information respecting the financial affairs of Akwesasne in the form and with the content approved by Council on the recommendation of the Finance Committee.

(2) The Senior Financial Officer shall provide the financial information in subsection (1) to Council and the Finance Committee not more than forty-five (45) days following the end of the month for which the information was prepared.

#### **Quarterly Financial Statements**

~~70.67.~~(1) At the end of each quarter of the Fiscal Year, the Senior Financial Officer shall prepare financial statements for Akwesasne for that quarter in the form and with the content approved by Council on the recommendation of the Finance Committee.

(2) The Senior Financial Officer shall provide the quarterly financial statements in subsection (1) to Council and the Finance Committee not more than sixty (60) days after the end of the quarter of the Fiscal Year for which they were prepared.

(3) The quarterly financial statements in subsection (1) shall be

- (a) reviewed by the Finance Committee and recommended to Council for approval; and

- (b) reviewed and approved by Council.

#### **Annual Financial Statements**

~~71.68.~~(1) At the end of each Fiscal Year the Senior Financial Officer shall prepare the Annual Financial Statements of Akwesasne for that Fiscal Year in accordance with GAAP and to a standard that is at least comparable to that generally accepted for governments in Canada.

(2) The Annual Financial Statements shall be prepared in a form approved by Council on the recommendation of the Finance Committee.

(3) The Annual Financial Statements shall include the financial information of Akwesasne for the Fiscal Year.

(4) The Senior Financial Officer shall provide draft Annual Financial Statements to the Finance Committee for review within ninety (90) days following the end of the Fiscal Year for which they were prepared.

(5) The Finance Committee shall present draft Annual Financial Statements to Council for review within one hundred (100) days following the end of the Fiscal Year for which they were prepared.

#### **Special Purpose Reports**

~~72.69.~~ The Senior Financial Officer shall prepare the following Special Purpose Reports:

- (a) a report setting out all payments made to honour guarantees and indemnities for that Fiscal Year;
- (b) a report setting out the information required in section 10;
- (c) a report setting out all debts or obligations forgiven by Akwesasne;
- (d) a report setting out the information required in paragraph ~~61.60~~(3)(c); and
- (e) any other report required under ~~the Act or~~ an agreement.

#### **Appointment of Auditor**

~~73.70.~~(1) Akwesasne shall appoint an Auditor for each Fiscal Year to hold office until the later of

- (a) the end of the Council meeting when the audited Annual Financial Statements for that Fiscal Year are being considered; or
- (b) the date the Auditor's successor is appointed.

(2) The terms and conditions of the appointment of the Auditor shall be set out in an engagement letter approved by the Finance Committee and shall include the Auditor's obligation

- (a) to confirm in writing that the Annual Financial Statements and the audit of them comply with this Law, ~~the Act, and FMB Standards, where applicable~~; or
- (b) to the extent they are not in compliance, to identify in writing consequential non-compliance matters.



(3) To be eligible for appointment as the auditor of Akwesasne, an auditor shall

(a) be independent of Akwesasne, its Related Bodies, ~~members~~Members of Council, Officers, and Members; and

(b) be a public accounting firm or public accountant

(i) in good standing with the Chartered Professional Accountants of Canada, the Canadian Institute of Chartered Accountants, the Certified General Accountants Association of Canada or the Society of Management Accountants of Canada and their respective counterparts in the province or territory in which the public accounting firm or public accountant is practicing, and

(ii) licensed or otherwise authorized to practice public accounting in the province of Ontario or the province of Quebec.

(4) If the Auditor ceases to be independent, the Auditor shall as soon as practicable after becoming aware of the circumstances

(a) advise Akwesasne in writing of the circumstances; and

(b) eliminate the circumstances that resulted in loss of independence or resign as the Auditor.

#### **Audit Requirements**

~~74.71.~~(1) The Annual Financial Statements of Akwesasne shall be audited by the Auditor not more than one hundred and twenty (120) days after the Fiscal Year-end.

(2) The Auditor shall conduct the audit of the Annual Financial Statements in accordance with generally accepted auditing standards established by the Chartered Professional Accountants of Canada.

(3) When conducting the audit, the Auditor shall provide

(a) an audit opinion of the Annual Financial Statements; and

(b) review comments on the Special Purpose Reports referred to in section ~~74.69.~~

#### **Auditor's Authority**

~~75.72.~~(1) To conduct an audit of the Annual Financial Statements of Akwesasne, the Auditor shall be given access to

(a) all Records of Akwesasne for examination or inspection and given copies of these Records on request; and

(b) any ~~member~~Member of Council, Officer, employee, contractor or agent of Akwesasne to ask any questions or request any information.

(2) On request of the Auditor, every person referred to in paragraph (1)(b) shall

(a) make available all Records referred to in paragraph (1)(a) that are in that person's care or control; and

(b) provide the Auditor with full information and explanation about the affairs of Akwesasne as necessary for the performance of the Auditor's duties.

(3) The Auditor shall be given notice of

(a) every meeting of the Finance Committee; and

(b) the Council meeting where the annual audit, including the Annual Financial Statements, will be considered and approved.

(4) Subject to subsection (6), the Auditor may attend any meeting for which ~~he or she~~<sup>they</sup> shall be given notice under this section or to which the Auditor has been invited and shall be given the opportunity to be heard at those meetings on issues that concern the Auditor as Auditor of Akwesasne.

(5) The Auditor may communicate with the Finance Committee, as the Auditor considers appropriate, to discuss any subject that the Auditor recommends be considered by the Finance Committee.

(6) The Auditor may be excluded from all or any part of a meeting of the Finance Committee or Council by a recorded vote if the subject matter relates to the retaining or dismissal of the Auditor.

#### **Review of Audited Annual Financial Statements**

~~76.73.~~(1) The audited Annual Financial Statements shall be provided to the Finance Committee for its review and consideration not more than one hundred and five (105) days after the Fiscal Year-end for which the statements were prepared.

(2) Council shall review and approve the audited Annual Financial Statements not more than one hundred and twenty (120) days after the end of the Fiscal Year for which the statements were prepared.

#### **Access to Annual Financial Statements**

~~77.74.~~(1) Before the Annual Financial Statements may be published or distributed, they shall

(a) be approved by Council;

(b) be signed by

(i) the Grand Chief of Akwesasne,

(ii) the Chair,

(iii) the Executive Director, and

(iv) the Senior Financial Officer; and

(c) include the Auditor's audit report of the Annual Financial Statements.

(2) The audited Annual Financial Statements and Special Purpose Reports shall be available for inspection by Members at the principal administrative offices of Akwesasne during normal business hours.

(3) Upon approval of the audited Annual Financial Statements Council shall schedule an Information Meeting to be held within thirty ( 30 ) days of approval for the purpose of informing Members of Akwesasne about matters in the audited Annual Financial Statements.

(4) Notice of the Information Meeting shall be posted in a public place in Akwesasne at least ten (10) days before the meeting specifying :

(i) the time , date and place of the meeting; and

(ii) the agenda or general nature of matters to be presented at the meeting.

(5) The following information need not be disclosed to Members of Akwesasne at the Information meeting if the Council determines disclosure inappropriate :

(a) receipt of advice that is subject to solicitor /client privilege;

(b) litigation or potential litigation ;

(c) personal information about an individual ; and

(d) information which is or would be protected from disclosure under applicable law.

#### **Annual Report**

~~78.75.~~(1) Not later than one hundred and eighty (180) days after the end of each Fiscal Year, Council shall prepare an annual report on the operations and financial performance of Akwesasne for the previous Fiscal Year.

(2) The annual report referred to in subsection (1) shall include the following:

(a) a description of the services and operations of Akwesasne;

(b) a progress report on any established financial objectives and performance measures of Akwesasne; ~~and~~

(c) the audited Annual Financial Statements of Akwesasne for the previous Fiscal Year; and

(d) any Special Purpose Reports referred to in section ~~74~~69, including the Auditor's report or review engagement report, as applicable.

(3) The Executive Director shall provide the annual report referred to in subsection (1) to a Member as soon as practicable after a request is made by the Member.

~~(a) to a Member as soon as practicable after a request is made by the Member;~~

~~(b) to the FMB as soon as practicable after the report's publication, if Akwesasne has a certificate issued by the FMB under subsection 50(3) of the Act; and~~

~~(e) to the FNFA as soon as practicable after the report's publication, if Akwesasne is a Borrowing Member.~~

(4) Council shall establish regulations, policies or procedures respecting, or give directions respecting, an accessible process and remedy available to Members who have requested but have not been provided with the annual report of Akwesasne including requiring

(a) the maintenance of a register for the annual report that identifies all Members who have requested a copy of the annual report, the date each request was received and the date the annual report was provided to the Member; and

(b) the Executive Director to report quarterly to the Finance Committee on the steps taken to ensure compliance with subsection (3) and Council policy made under this subsection.

### ***DIVISION 8 - Information and Information Technology***

#### **Ownership of Records**

~~79.76.~~(1) All Records that are produced by or on behalf of Akwesasne or kept, used or received by any person on behalf of Akwesasne are the property of Akwesasne.

(2) Council shall establish policies or procedures or give directions to ensure that the Records referred to in subsection (1) remain the property of Akwesasne.

#### **Operations Manual**

~~80.77.~~(1) The Executive Director shall prepare and maintain a current operations manual respecting every element of Akwesasne's administrative systems, including any Financial Administration systems referred to in this Law.

(2) The operations manual under subsection (1) shall be made available to ~~members~~Members of Council, members of the Finance Committee and all other Council committees and Officers and employees of Akwesasne.

(3) If any part of the operations manual under subsection (1) is relevant to the services being provided by a contractor or agent of Akwesasne, that part of the operations manual shall be made available to the contractor or agent.

#### **Record Keeping and Maintenance**

~~81.78.~~(1) The Executive Director shall ensure that Akwesasne prepares, maintains, stores and keeps secure all of Akwesasne's Records that are required under this Law or any other applicable law.

(2) Akwesasne's Records may not be destroyed or disposed of except as permitted by, and in accordance with, the regulations, policies, procedures or directions of Council.

(3) All Financial Records of Akwesasne shall be stored for at least seven (7) years after they were created.

(4) Council shall establish regulations, policies and procedures or give directions respecting access of any persons to Akwesasne's Records.

### **Account Records**

~~82. If Akwesasne has a loan from the FNFA that is secured by Other Revenues, the Senior Financial Officer shall prepare, maintain, store and keep secure a complete set of all Records respecting Other Revenues of Akwesasne, including all Records referred to in section 5 of the Revenue Management Implementation Regulations as amended by the Financing Secured by Other Revenues Regulations.~~

### **Confidentiality of Information**

~~83.~~79.(1) No person may be given access to Akwesasne's Records containing confidential information except as permitted by, and in accordance with Akwesasne Laws, regulations, policies, procedures and directions of Council.

(2) All persons who have access to Akwesasne's Records shall comply with all Akwesasne Laws, regulations, policies, procedures or directions of Council respecting the confidentiality, control, use, copying or release of that Record or information contained in those Records.

### **Information Technology**

~~84.~~80. Council shall establish regulations, policies or procedures or give directions respecting information technology used by Akwesasne in its operations to ensure the integrity of Akwesasne's Financial Administration system and its database.

## **PART V - Capital Projects**

### **Council General Duties**

~~85.~~81. Council shall take reasonable steps to ensure that

- (a) Akwesasne's Tangible Capital Assets are maintained in a good and safe condition and to the same standard as a prudent owner of those assets;
- (b) the Rehabilitation or Replacement of Akwesasne's Tangible Capital Assets is in accordance with a Life-Cycle Management Program described in this Part; and
- (c) Capital Projects for the construction of buildings or other improvements are financed, planned and constructed in accordance with procedures and to standards that generally apply to the financing, planning and construction of public buildings and other improvements of organized communities in the region in which the majority of Akwesasne's Lands are located.

### **Tangible Capital Assets Reserve Fund**

~~86.~~82. Council shall establish a tangible capital asset reserve fund for the purpose of funding expenditures for Capital Projects carried out under this Part.

### **Reports on Capital Projects**

~~87.~~83. At each Finance Committee meeting, the Executive Director shall report on the following subjects:

- (a) year to date borrowings, loans and payments in respect of each Capital Project;

- (b) the status of a Capital Project, including
  - (i) a comparison of expenditures to date with the project budget,
  - (ii) a detailed description of any identified legal, financial, technical, scheduling or other problems, and
  - (iii) the manner in which a problem identified in subparagraph (ii) has been or will be addressed; and
- (c) steps taken to ensure compliance with section ~~89~~86 for every Capital Project.

**Life-Cycle Management Program**

~~88.84~~84(1) The Executive Director shall establish and keep current a register of all Akwesasne's Tangible Capital Assets that identifies each of these assets and includes the following information:

- (a) location and purpose of the asset;
- (b) ownership and restrictions over ownership of the asset;
- (c) year of acquisition;
- (d) last inspection date of the asset;
- (e) expected life of the asset at the time of acquisition;
- (f) assessment of condition of the asset and its remaining useful life;
- (g) estimated residual value of the asset;
- (h) insurance coverage for the asset; and
- (i) any other information required by Council.

(2) On or before November 30 of each year, the Executive Director shall arrange for the inspection and review of the state of each of Akwesasne's Tangible Capital Assets to establish or update information respecting the following matters:

- (a) its present use;
- (b) its condition and state of repair;
- (c) its suitability for its present use;
- (d) its estimated remaining life;
- (e) its estimated Replacement cost;
- (f) estimated dates and costs of its required future Rehabilitation;

(g) a comparison of annual operating and maintenance costs, other than Rehabilitation costs, for the last five (5) Fiscal Years;

(h) maintenance Records for all periods up to the date of inspection; and

(i) property and liability insurance covering the capital asset and its use or operation.

(3) On or before December 31 of each year, the Senior Financial Officer shall prepare the following:

(a) a schedule of annual routine maintenance, other than Rehabilitation, for each of Akwesasne's Tangible Capital Assets for the next Fiscal Year;

(b) five (5), ten (10) and thirty (30) year forecasts of the estimated cost for Rehabilitation or Replacement of Akwesasne's Tangible Capital Assets;

(c) the proposed budget for Rehabilitation of Akwesasne's Tangible Capital Assets for the next Fiscal Year, setting out

(i) each proposed Rehabilitation project and its schedule,

(ii) the estimated cost, including contingencies, of each proposed Rehabilitation project, and

(iii) the estimated amounts and timing of money that is required to carry out each proposed Rehabilitation project; and

(d) the proposed budget for Replacement of Akwesasne's Tangible Capital Assets for the next Fiscal Year setting out

(i) each proposed Replacement project and its schedule,

(ii) the description of each asset to be replaced,

(iii) the estimated cost, including contingencies, of each proposed Replacement project, and

(iv) the reasons why each proposed acquisition should be regarded as a Replacement for the capital asset to be replaced.

#### **Review by Finance Committee**

~~89-85~~(1) On or before January 15 of each year, the Finance Committee shall review the information, schedules and budget prepared under section ~~8784~~ for the following purposes:

(a) to identify any means to reduce the costs of each Rehabilitation or Replacement project included in the proposed budgets;

(b) to know the effect that each Rehabilitation or Replacement project included in the proposed budgets will have on the annual operating costs and routine maintenance costs in future years; and

(c) to determine whether any significant savings might be ~~effected~~affected by coordinating the scheduling of projects, deferring any projects or carrying out Rehabilitation projects rather than Replacement projects.

(2) On or before January 15 of each year, the Finance Committee shall review any plans for new construction of Akwesasne's Tangible Capital Assets, including the proposed schedule, budget and impact on annual operating costs and routine maintenance costs in future years.

#### Capital Projects – Contracts and Tenders

~~90.86.~~(1) Council shall establish regulations, policies or procedures or give directions respecting the management of Capital Projects, including the following:

- (a) project planning, design, engineering, safety and environmental requirements;
- (b) project costing, budgeting, financing and approval;
- (c) project and contractor bidding requirements;
- (d) tender, contract form and contract acceptance;
- (e) course of construction insurance;
- (f) project performance guarantees and bonding;
- (g) project control, including contract management; and
- (h) holdbacks, work approvals, payment and audit procedures.

(2) All Capital Projects shall be managed in accordance with the regulations, policies, procedures or directions referred to in subsection (1).

#### Capital Project Consultants

~~91.87.~~ The Executive Director may retain the services of a professional engineer or other consultant to assist the Executive Director, Finance Committee and Council to carry out their obligations under this Part.

### PART VI - Miscellaneous

#### ~~FMB Standards~~

~~92.(1) If Akwesasne is a Borrowing Member or has a certificate issued by the FMB under subsection 50(3) of the Act, Akwesasne shall comply with all the applicable FMB Standards.~~

~~(2) If Council becomes aware that Akwesasne is not complying with a FMB Standard referred to in subsection (1), Council shall as soon as practicable take the required actions to bring Akwesasne into compliance with the FMB Standard.~~

#### ~~Delegated Authority on Intervention~~

~~93. Without limiting section 53 of the Act as adapted by the *Financing Secured by Other Revenues Regulations*, if~~

- ~~(a) Akwesasne is using its Other Revenues to secure a loan from the FNFA, and~~



~~(b) the FMB gives notice to Akwesasne under section 53 of the Act that third party management of Akwesasne's Other Revenues is required;~~

~~Council delegates to the FMB~~

~~(c) the powers and authorities described in subsection 53(2) of the Act as adapted by the *Financing Secured by Other Revenues Regulations*, and~~

~~(d) any other of Council's powers required to give effect to third party management of Akwesasne's Other Revenues under the Act.~~

### Reports of Breaches and Financial Irregularities

~~94.88.~~(1) Subject to subsections (2) and (3), if any person has reason to believe that

(a) an expenditure, liability or other transaction of Akwesasne is not authorized by or under this Law or another Akwesasne Law,

(b) there has been a theft, misappropriation or other misuse or irregularity in the funds, accounts, assets, liabilities and financial obligations of Akwesasne,

(c) a provision of this Law has been contravened, or

(d) a person has failed to comply with the Schedule that forms part of this Law,

the person may disclose the circumstances to the Chair.

(2) If a ~~member~~Member of Council becomes aware of any circumstances described under subsection (1), the ~~member~~Member of Council shall report them to the Chair.

(3) If an Officer, employee, contractor or agent of Akwesasne becomes aware of any circumstances described under subsection (1), the Officer, employee, contractor or agent, as the case may be, shall report them to the Executive Director or the Chair.

### Inquiry into Report

~~95.89.~~(1) If a report is made to the Executive Director under subsection ~~9388~~(3), the Executive Director shall inquire into the circumstances reported and report the findings to the Finance Committee as soon as practicable.

(2) If a report is made to the Chair under section ~~9388~~, the Chair shall inquire into the circumstances reported and report the findings to the Finance Committee as soon as practicable.

(3) The Finance Committee may make a further inquiry into any findings reported to it under this section but, in any event, shall make a report to Council respecting any circumstances reported to the Finance Committee under this section, including the Finance Committee's recommendations, if any.

### Protection of Parties

~~96.90.~~(1) All reasonable steps shall be taken by the Executive Director, the members of the Finance Committee and the ~~members~~Members of Council to ensure that the identity of the person who makes a report under section ~~9388~~ is kept confidential to the extent practicable in all the circumstances.

(2) A person who makes a report in good faith under section ~~9388~~ shall not be subjected to any form of reprisal by Akwesasne or by a ~~member~~Member of Council, Officer, employee, contractor or agent of Akwesasne as a result of making that report.

(3) The Executive Director and the Chair shall take all necessary steps to ensure that subsection (2) is not contravened and shall report any contravention or suspected contravention to Council.

(4) Council shall establish regulations, policies or procedures or give directions

(a) for the recording and safeguarding of reports made under section ~~9388~~ and any Records prepared during the inquiry or investigation into those reports;

(b) for the inquiry or investigation into reports made under section ~~9388~~; and

(c) concerning the fair treatment of a person against whom a report has been made under section ~~9388~~.

### Liability for Improper Use of Money

~~97.91.~~(1) A ~~member~~Member of Council who votes for a Resolution authorizing an amount to be expended, invested or used contrary to this Law ~~or a law made under paragraph 5(1)(d) of the Act~~ is personally liable to Akwesasne for that amount.

(2) Subsection (1) does not apply if the ~~member~~Member of Council relied on information provided by an Officer or employee of Akwesasne and the Officer or employee was guilty of dishonesty, gross negligence or malicious or willful misconduct when providing the information.

(3) An amount owed to Akwesasne under subsection (1) may be recovered for Akwesasne by Akwesasne, a Member or a person who holds a security under a borrowing made by Akwesasne.

(4) It is a good defence to any action brought against an Officer or employee of Akwesasne for unauthorized expenditure, investment or use of Akwesasne's Financial Assets if it is proved that the Officer or employee gave a written and signed warning to Council that in ~~his or her~~their opinion, the expenditure, investment or use would be unlawful.

### Indemnification against Proceedings

~~98.92.~~(1) Subject to subsection (2), Council may by Resolution Indemnify or provide for the indemnification of a named Akwesasne Official, a category of Akwesasne Official or all Akwesasne Officials in accordance with the terms specified in the Resolution.

(2) Council may not pay a fine that is imposed as a result of an Akwesasne Official's conviction for an offence unless the offence is a strict or absolute liability offence.

### Periodic Review of and Amendments to Law

~~99.93.~~(1) On a regular, periodic basis established by a policy of Council, the Finance Committee shall conduct a review of this Law

- (a) to determine if it facilitates effective and sound Financial Administration of Akwesasne; and
- (b) to identify any amendments to this Law that may better serve this objective.

~~(3) If Akwesasne is a Borrowing Member, it may only repeal this Law if it replaces it at the same time with another financial administration law which has been reviewed by the FMB and issued a compliance approval under section 9 of the Act.~~

~~(4) Any amendment of this Law must be reviewed by the FMB and issued a compliance approval under section 9 of the Act.~~

### Amendments

~~100.94.~~ Council may amend, or repeal and replace, this Law from time to time, in accordance with the *Akwesasne Law Enactment Procedural Regulation* and this Law, ~~provided that no amendment to, or repeal and replacement of, this Law shall come into force until approved by the FMB in accordance with the provisions of the Act.~~

### Provision of Law to FNFA

~~101.~~ If Akwesasne intends to apply to become a Borrowing Member, Council shall provide a copy of this Law to the FNFA as soon as practicable after the FMB approves the Law.

### Coming into Force

**95.** (1) This section and the operative portions of sections 1-7, 24, 26, 27, 29, ~~66-70, 72-76, 81, 82, 91-95-68~~ and ~~92-70-74~~ come into force on the day after this Law ~~is approved by the FMB under section 9 of the FMA comes into force.~~

(2) The remaining provisions of this Law come into force on the earlier of

~~(a) the day that is thirty-six (36) months after the date that Akwesasne receives a financial performance certificate from the FMB; and~~

~~(a) January 1, 2020; and~~

~~(b) the day they are brought into force by Resolution.~~

**THIS LAW IS HEREBY** confirmed by Council as a duly enacted Law on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, in the Province of \_\_\_\_\_ at a duly called and conducted Council meeting at which the required quorum of \_\_\_\_\_(\_\_\_\_) ~~members~~Members of Council was present throughout.

\_\_\_\_\_  
Grand Chief ~~Abraham~~Abram Benedict

\_\_\_\_\_  
Councillor April Adams~~-Phillips~~

\_\_\_\_\_  
Councillor ~~Dennis-Chaussi~~ Carolyn Francis

\_\_\_\_\_  
Councillor ~~Ryan~~Theresa Jacobs

\_\_\_\_\_  
Councillor Connie Lazore

\_\_\_\_\_  
Councillor Darryl Lazore

\_\_\_\_\_  
Councillor Joseph Lazore

\_\_\_\_\_  
Councillor ~~Karen Loran~~ Tobi Mitchell  
Jacobs

\_\_\_\_\_  
Councillor ~~Steve-Thomas~~ Julie Phillips-

\_\_\_\_\_  
Councillor ~~Louise-Thompson~~ Edward Roundpoint  
Thompson

\_\_\_\_\_  
Councillor ~~Timothy~~ Tim

\_\_\_\_\_  
Councillor Troy Thompson

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Councillor Vincent Thompson

Draft for Phase IV

## **SCHEDULE – Conflict of Interest Policy**

### **PART I - INTERPRETATION**

#### **1.0 Interpretation**

##### **1.1 In this Policy,**

“AFAL” means the *Akwesasne Financial Administration Law*;

“Akwesasne” means the Mohawks of Akwesasne, being a band within the meaning of the *Indian Act*;

“Benefit” means a direct or indirect monetary or non-monetary advantage, other than the prestige associated with the position of Member of Council;

“Business” means a sole proprietorship, partnership, corporation, or joint venture;

“Child” means a person who is a Member and is either a person’s natural child, adopted child, or child whom the person has demonstrated a settled intention to treat as a child of ~~his or her~~their family who is under the age of 18 years and includes such a person who is:

- (a) over 18 years of age but under the age of 21 years and is enrolled in, and attending, a post-secondary educational institution, or
- (b) over the age of 18, but as a result of mental or physical disability, is unable to care for themselves and is dependent on someone else for support;

“Closely-Related Person” means a person who is

- (a) a Family Member of a Member of Council, officer, or employee, agent or contractor of Akwesasne, or
- (b) an associate or partner of a Member of Council, officer, or employee, agent or contractor of Akwesasne and the person holds a Significant Interest in the Business that is the subject of a Council Decision or Transaction;

“Common-Law Relationship” means the situation where two people have lived together in a marriage-like relationship for at least one (1) year;

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

“Council Decision” includes participation in the discussion and voting on the question;

“Court” means the Akwesasne Court;

“Custom” means the cultural or traditional practices Akwesasne maintains and practices today;

“Executive Director” means the person appointed by Council under section 18 of the AFAL who is responsible for the overall management of all the day-to-day operations of Akwesasne;

“Family Member” means an individual’s Spouse, Child, brother, sister, parent or grandparent (including in-laws);

“Married” means the union of two persons that is formalized by religious or civil ceremony recognized under the laws of other governments or recognized under Custom;

“Member” means a person enrolled on the Membership Roll under the *Akwesasne Membership Code*;

“Member of Council” means the Grand Chief ~~or~~ and any District Chief of Council;

“Membership Roll” means a list of enrolled Members of the Mohawks of Akwesasne maintained by the Akwesasne Office of Vital Statistics;

“Private Interests” means the personal and financial interests of a person and includes the personal and financial interests of Closely-Related Persons;

“Resolution” means a resolution formally adopted by Council pursuant to its governing authority;

“Significant Interest” means 25% or more ownership, control, or other financial involvement;

“Special General Meeting” means a meeting held on an as required basis between Members and Council to make a decision on a specific issue or subject matter;

“Spouse” means a person who is Married to, or in a Common-Law Relationship with, another person; and

“Transaction” means an arrangement under which

- (a) the Council and another person agrees to exchange value or services,
- (b) the Council confers a Benefit on another person, or
- (c) the Council receives a Benefit from another person.

1.2 Except unless otherwise expressly provided in this Schedule, words and expressions used in this Schedule have the same meanings as in the AFAL.

1.3 Sections 2 and 3 of the AFAL apply to this Schedule.

1.4 If there is a conflict or inconsistency between a provision of this Schedule and the AFAL, the AFAL shall prevail to the extent of the conflict or inconsistency.

## **2.0 Definition of Conflict of Interest**

2.1 A Conflict of Interest arises where a Member of Council, officer, employee, contractor or agent of Akwesasne has a Private Interest that is

- (a) real, potential or perceived; and
- (b) direct or indirect,

and which

- (c) prevents, or appears to prevent, the person from acting
  - (i) in Akwesasne’s best interest, or
  - (ii) on behalf of Akwesasne fairly, impartially and without bias.

- 2.2 For greater certainty, persons may declare themselves to be in a Conflict of Interest even if the circumstances do not fall within the definition at section 2.1.
- 2.3 Notwithstanding section 2.1, a person's Private Interests do not give rise to a Conflict of Interest if those interests are
- (a) the same as those of a broad class of Members to which the person or a Closely-Related Person belongs;
  - (b) so remote or insignificant that they could not be reasonably regarded as likely to influence the Person in the exercise of a power or performance of a duty or function;
  - (c) where the only Benefit derived by a Closely-Related Person is as an employee of a person or Business entering into a Transaction with Council;
  - (d) where the person guarantees repayment of, or otherwise assumes liability to repay, a loan made to Council;
  - (e) the Transaction is with a non-profit organization and the person is a director or member of that organization; or
  - (f) where Council agrees to indemnify or reimburse a person for expenses or liabilities, or otherwise arranges for liability insurance for.
- 2.4 For greater certainty, it is hereby acknowledged that among First Nations and Aboriginal peoples generally, and particularly within the Mohawk Nation, gift exchanges and gestures of hospitality between Nations, communities and persons represents a long-standing tradition of greeting, trust and honor and accordingly, any Member of Council, officer, or employee of Akwesasne, may accept hospitality or a gift when receipt of such hospitality or gift
- (a) is part of typical or traditional exchanges, or a customary gesture of courtesy and goodwill between person doing business together, or part of normal protocol or cultural exchanges associated with the recipient's office or employment;
  - (b) is lawful and in accordance with Akwesasne's ethical practices and standards; and
  - (c) could not be considered by an impartial observer as a bribe, pay off or improper or illegal payment.
- 2.5 For greater certainty, this Schedule shall not be used or construed to restrict appropriate gift giving or receiving customs or traditions or to prevent due recognition by way of a gift to a Member of Council, an officer, or employee of Akwesasne, in recognition of their service to Akwesasne or to an Aboriginal cause or institution.

## **PART II – COUNCIL**

### **3.0 Application**

- 3.1 This Part applies to all Members of Council.

### **4.0 General Obligations**

- 4.1 Members of Council, in accordance with their fiduciary duties, shall at all times
- (a) act honestly, in good faith, in the best interests of Akwesasne;
  - (b) act in accordance with their oath of office;
  - (c) conduct themselves in a respectful manner; and
  - (d) conscientiously serve the people and community of Akwesasne.



- 4.2 Members of Council shall arrange their affairs and conduct themselves in a manner to avoid a Conflict of Interest or the appearance of a Conflict of Interest.
- 4.3 Members of Council shall avoid placing themselves in circumstances where their ability to exercise a power or perform a duty or function could be influenced by the interests of any person to whom they owe a private obligation or who expects to receive some Benefit or preferential treatment from them.
- 4.4 Members of Council shall not be involved in any Transaction or matter where they are in a Conflict of Interest.
- 4.5 Without limiting the generality of 4.1, all Members of Council shall:
- (a) perform the duties and responsibilities of their position conscientiously and honestly to the best of their ability in the best interests of Akwesasne;
  - (b) conduct themselves in their public and personal life with integrity and in a manner that will maintain and enhance respect for the Council and Akwesasne;
  - (c) refrain from the consumption of alcohol or drugs, except as necessary for medical purposes, during the workday including while travelling for Council business;
  - (d) perform their duties courteously, refraining from rudeness or profanity in dealings with other ~~members~~Members of Council, executive staff, officials and representatives from other governments, First Nations and the public;
  - (e) use information obtained in the course of their duties or positions as a Member of Council only for purposes intended to serve the best interests of Akwesasne; and
  - (f) protect the confidentiality of all information, written or oral, in accordance with their oath of office, general policies or laws applying to Council or its administration and any specific confidentiality provisions in a specific Resolution.
- 4.6 A Member of Council shall not allow Private Interests to:
- (a) compete with those of Akwesasne; or
  - (b) come into consideration in any matter in which the interest of Akwesasne are involved.
- 4.7 A Member of Council shall avoid any situation that would compromise their integrity, independence and ability to act impartially on behalf of the Council and in the best interests of Akwesasne.
- 4.8 A Member of Council shall not use ~~his or her~~their position on Council to derive a Benefit.

## **5.0 Council's Decisions**

- 5.1 A Member of Council shall not take part in a Council Decision about a Transaction between the Council and
- (a) the Member of Council or a Closely-Related Person; or
  - (b) any other person if the Member of Council or a Closely-Related Person would likely derive a Benefit from the Transaction.
- 5.2 Where Council wishes to:

- (a) enter into a Transaction with any Member of Council;
- (b) enter into a Transaction with a Closely-Related Person; or
- (c) enter into a Transaction with a person where a Member of Council or a Closely-Related Person is likely to derive a Benefit,

it shall do so only in accordance with this Schedule.

## **6.0 Conflict of Interest Procedures**

- 6.1 A Member of Council who believes that they are or may be in a Conflict of Interest shall disclose the nature and extent of the conflict to the Council at the first Council meeting after the Member of Council becomes aware of the conflict, or earlier if the matter is urgent, whether or not the Transaction or matter in question has already been concluded.
- 6.2 If a Member of Council is in doubt about whether they are in a Conflict of Interest, the Member of Council may ask the Council to make a determination on the matter.
- 6.3 After a Member of Council makes a disclosure under section 6.1 or 6.2, the Member of Council shall:
  - (a) leave the meeting where the matter is being considered, including a determination under sections 6.2, 6.5 or 6.8;
  - (b) not be counted in the quorum;
  - (c) not participate in the discussion or vote on the matter in question;
  - (d) not sit as a member or chair of a committee or board for which the subject of the Conflict of Interest is at issue; and
  - (e) not attempt in any way to influence the discussion or vote on the matter in question.
- 6.4 If a Member of Council is concerned that another Member of Council may be in a Conflict of Interest, the Member of Council shall raise the concern in the presence of the full Council, including the Member of Council in question, and the Council shall discuss whether there is a Conflict of Interest.
- 6.5 In the event that
  - (a) after a discussion under section 6.2 or 6.4 the Council determines that there may be a Conflict of Interest; or
  - (b) a Member of Council fails or refuses to declare a Conflict of Interest,the Council shall meet without the Member of Council in question, in order to determine whether a Conflict of Interest exists and determine the appropriate action.
- 6.6 If the Council determines under section 6.5 that a Member of Council is in a Conflict of Interest, the Member of Council shall comply with section 6.3.
- 6.7 The following shall be documented in the minutes of a Council meeting under this Part:
  - (a) the disclosure of a Member of Council under section 6.1 or 6.2;
  - (b) a potential conflict raised under section 6.4;
  - (c) a determination made by the Council under section 6.5 or 6.8; and

- (d) the absence of a Member of Council from the Council meeting at which the Conflict of Interest was being discussed.
- 6.8 Council may by Resolution approve a Transaction where:
- (a) the Member of Council has complied with sections 6.1 to 6.3 and has provided the Council with sufficient information to assess the nature of the Private Interest involved in the Transaction; and
  - (b) Council determines the Transaction to be fair and reasonable.
- 6.9 A Resolution under section 6.8 may be made conditional upon the affected Member of Council taking steps or following procedures that may be necessary to
- (a) protect the interests of Akwesasne; or
  - (b) safeguard Members' trust in the conduct of the Council's activities.
- 6.10 In circumstances where because of provisions in this policy no quorum of Council can be established to consider a Transaction, the matter shall be brought before the next Council meeting at which time the Transaction shall be considered.
- 6.11 If quorum can never be established for a Council meeting because of the requirements of this Schedule:
- (a) the matter shall be brought before a Special General Meeting called to consider the Transaction;
  - (b) at the Special General Meeting, Members of Council affected shall disclose the circumstances preventing them from participating in the Council Decision concerning the Transaction in question;
  - (c) there shall be a discussion of the Transaction and a vote may be ~~taken~~taken upon motion presented and second by persons eligible as voters under the *Akwesasne Election Law*; and
  - (d) the Transaction may be authorized if approved by a majority of eligible voters voting on the question.
- 6.12 Where a Transaction is authorized under this section, the Council Decision shall be recorded in the minutes of the Special General Meeting and a copy of the Resolution attached thereto.

## **7.0 Disclosure of Interests**

- 7.1 Each Member of Council shall file with the Executive Director a written disclosure of the following information:
- (a) the names of the Member of Council's spouse and Children;
  - (b) the employers of
    - (i) the Member of Council,
    - (ii) the spouse of the Member of Council, and
    - (ii) the Children of the Member of Council;
  - (c) Certificates of Possession under the *Indian Act* held by
    - (i) the Member of Council,
    - (ii) the spouse of the Member of Council, or
    - (ii) the Children of the Member of Council; and

- (d) Significant Interests held by
  - (i) the Member of Council,
  - (ii) the spouse of the Member of Council, or
  - (ii) the Children of the Member of Council.

7.2 A Member of Council shall file a disclosure under section 7.1 on the following occasions:

- (a) within thirty (30) days of being elected to Council and on or before the first day of September of each year thereafter; and
- (b) as soon as practical after any material change in the information previously disclosed.

7.3 The Executive Director shall establish, maintain and safeguard a register of all information disclosed by a Member of Council under this section.

## **8.0 Employment with the Mohawks of Akwesasne**

8.1 Any candidate who is an employee of Akwesasne shall be granted a leave of absence from their employment upon election.

## **9.0 Protection of Information and Property**

9.1 Members of Council shall keep confidential all information that they receive while performing their duties or functions unless the information is generally available to members of the public or Members; and shall only use such confidential information for the specific purposes for which it was provided to the Council.

9.2 Members of Council shall not in any way make use of information received as a consequence of, or in the course of, their position as a Member of Council in order to Benefit their Private Interests.

9.3 Members of Council shall not use Akwesasne property for personal use unless that use has been approved by Council or the Executive Director.

9.4 Members of Council shall not pursue an opportunity available to Akwesasne to Benefit their Private Interests unless:

- (a) it is clear that Council has irrevocably decided against pursuing the opportunity; and
- (b) the opportunity in question is equally available to other Members, and the Member of Council has complied with applicable Akwesasne laws, policies and procedures.

## **PART III – OFFICERS AND EMPLOYEES**

### **10.0 Application**

10.1 This Part applies to all officers and employees of Akwesasne.

### **11.0 General Obligations**

11.1 Officers and employees shall

- (a) act honestly and in good faith and in the best interests of Akwesasne in the performance of their duties and functions;
- (b) avoid circumstances that could result in the officer or employee having a Conflict of Interest; and
- (c) avoid placing themselves in circumstances where their ability to exercise a power or perform a duty or function of their office or position could be influenced by the interests of any person to whom they owe a private obligation or who expects to receive some Benefit or preferential treatment from them.

11.2 The Executive Director shall ensure that every officer and employee is informed of, and complies with, their obligations under this Part.

## **12.0 Conflict of Interest Procedures**

12.1 If an officer or employee believes they have a Private Interest which may reasonably be viewed as interfering with their ability to exercise a power or perform a duty or function of their office or position,

- (a) the Executive Director shall disclose such interest in writing to the Council; and
- (b) officers and employees shall disclose such interest in writing to the Executive Director.

12.2 If an officer or employee believes that they are, or may be, in a Conflict of Interest,

- (a) the Executive Director shall disclose in writing the matter to the Council; and
- (b) officers and employees shall disclose in writing the matter to the Executive Director; and
- (c) the officer or employee shall refrain from participating in any discussions or decision-making respecting the circumstances of the Conflict of Interest until advised by the Executive Director or the Council, on actions to be taken to avoid or mitigate the Conflict of Interest.

12.3 If the Executive Director or the Council becomes aware that an officer or employee may be in a Conflict of Interest, the Executive Director or quorum of Council shall require the officer or employee to absent themselves from any discussion or decision-making process regarding the subject of the Conflict of Interest.

12.4 The Executive Director shall keep, maintain and safeguard a record of all disclosures made under this Part.

## **13.0 Outside Employment and Activities**

13.1 Employees may work for another employer outside of Akwesasne, provided that the outside work

- (a) does not interfere with the performance of the employee's duties to Akwesasne;
- (b) does not bring Akwesasne into disrepute;
- (c) is not performed in such a way as to appear to represent Akwesasne; and
- (d) does not involve the use of Akwesasne's facilities, services, equipment or supplies to which the employee has access by virtue of their employment with Akwesasne.

13.2 Employees shall notify their directors if an outside job or activity might affect the employee's availability for their job with Akwesasne.

- 13.3 Officers and employees are entitled to be actively involved in the community as citizens, provided that they keep their role as private citizens separate and distinct from their responsibilities as officers and employees.

#### **14.0 Employment Relationships with Family Members**

- 14.1 Akwesasne may refuse to retain a contractor or agent, hire a new officer or employee, or transfer an existing officer or employee to a new position, where the retaining, hiring or transfer would result in a Conflict of Interest, or would create a direct reporting relationship with a Family Member.
- 14.2 If Akwesasne hires or retains as an officer, employee, contractor or agent who is a Family Member of a Member of Council or the Executive Director, the Member of Council or Executive Director shall absent themselves from any discussions or decisions regarding the hiring, compensation, management or termination of the Family Member.
- 14.3 Officers and employees who attend Council or committee meetings shall absent themselves from any discussion or decision-making regarding a Family Member that could place them in a Conflict of Interest.

#### **15.0 Protection of Mohawks of Akwesasne Information and Property**

- 15.1 Officers and employees shall keep confidential all information that they receive while exercising their powers or performing their duties or functions unless the information is generally available to members of the public or Members; and shall only use such confidential information for the specific purposes for which it was provided to the officer or employee.
- 15.2 Officers and employees shall not make use of any information received in the course of exercising their powers or performing their duties or functions to Benefit their Private Interests.
- 15.3 Officers and employees shall not use any personal property or services of Akwesasne for any purposes unrelated to the performance of their duties or functions unless that use is otherwise acceptable under the policies or directions of the Council.
- 15.4 Officers and employees shall not acquire any personal property of Akwesasne unless it is done in accordance with the policies or directions of the Council.

#### **16.0 Violation of this Policy**

- 16.1 Any officer or employee of Akwesasne who is found by the Executive Director or the Council to have violated this Policy shall be subject to disciplinary action, up to and including termination.

### **PART IV – CONTRACTORS AND AGENTS**

#### **17.0 Application**

- 17.1 This Part applies to all contractors and agents of Akwesasne, other than a person who has an employment contract with Akwesasne.

17.2 In this Part, a reference to a contractor or agent includes a reference to each employee or agent of the contractor or agent who is engaged to perform duties or functions under the contract with Akwesasne.

17.3 If a contractor is retained to exercise the powers or perform the duties or functions of an officer, or employee, the contractor shall comply with Part III as if the contractor were an officer or employee of Akwesasne.

#### **18.0 General Obligations**

18.1 Contractors and agents shall disclose to the Executive Director as soon as practicable any circumstances that could result in a Conflict of Interest.

18.2 The Executive Director shall keep a record of all disclosures made under this Part.

18.3 Contractors and agents shall act at all times with integrity and honesty in their dealings with

- (a) Akwesasne; and
- (b) any third party when representing or acting on behalf of Akwesasne.

18.4 Contractors and agents shall not attempt to obtain preferential treatment from Akwesasne by offering gifts or Benefits that a Member of Council, committee Member, officer or employee is prohibited from accepting under this Schedule.

18.5 If, while performing services for Akwesasne, a contractor or agent becomes aware of a business or investment opportunity being considered by Akwesasne, they shall not take advantage of the opportunity unless Council has determined not to pursue the opportunity.

18.6 Contractors and agents shall ensure that each of their employees or agents who are assigned to perform duties or functions under the contract with Akwesasne are informed of, and comply with, their obligations under this Part.

#### **19.0 Protection of Mohawks of Akwesasne Information and Property**

19.1 Contractors and agents shall keep confidential all information that they receive in the course of performing their duties or functions for Akwesasne, and shall only use such confidential information for the specific purposes for which it was provided, unless the information is generally available to members of the public.

19.2 Contractors and agents shall not make use of any information received in the course of performing their duties or functions to Benefit their Private Interests.

19.3 If a contractor or agent has been provided the use of any property or services of the Mohawks of Akwesasne in order to perform services for Akwesasne, the contractor or agent shall not use the property or services for any purposes unrelated to performance of those services.

### **PART IV – REMEDIES**

- 20.1 Where a Transaction is not carried out in accordance with this Schedule, the Member of Council, officer, employee, contractor or agent in question shall repay any Benefits received under the Transaction.
- 20.2 Akwesasne may use all reasonable legal means to recover amounts or Benefits improperly obtained by a Member of Council, an officer, employee, contractor or agent as a result of a contravention of this Schedule.
- 20.3 Where a Transaction is not entered into in accordance with this Schedule, the Court may, on the application of the Council or any Member over the age of eighteen (18),
- (a) prohibit the Council from entering the proposed Transaction;
  - (b) set aside the Transaction;
  - (c) order Member of Council, officer, employee, contractor or agent in question to repay any Benefits received under the Transaction; or
  - (d) make any order that it considers just and appropriate in the circumstances.
- 20.4 Any Council Decision authorizing or refusing to authorize a Transaction under this section shall not be set aside by the Court if:
- (a) procedures require for arriving at the Council Decision were faithfully observed;
  - (b) Council had enough information about the Transaction to assess the nature of the interest of a Member of Council or a Closely-Related Person on it; and
  - (c) Council acted honestly and in good faith.
- 20.5 Nothing in this Schedule relieves a Member of Council from liability that would otherwise attach to the Member of Council for breach of duty or breach of trust.