


AKWESASNE MOHAWK COUNCIL RESOLUTION

2007/2008 - #113

FILE REFERENCE



THE	MOHAWK COUNCIL OF AKWESASNE	THIS MEETING TOOK PLACE IN THE TERRITORY OF AKWESASNE, WITH THE FOLLOWING MEMBERS OF THE AKWESASNE MOHAWK COUNCIL PRESIDING. 
AGENCY	SOUTHERN ONTARIO DISTRICT	
PROVINCE	ONTARIO / QUEBEC	
PLACE	ADMINISTRATION BULDING I BOARDROOM	RECORDED VOTE:
DATE	<u>17</u> DAY <u>July</u> MONTH <u>2007</u> YEAR	FOR:
		AGAINST:
		ABSTENTION:

DO HEREBY RESOLVE:

MOVED: John
SECONDED: Cheryl

Do Hereby Resolve:

WHEREAS, the Mohawks of Akwesasne have the existing and inherent right of self-determination, which includes the inherent jurisdiction over their lands, peoples and territory;

AND WHEREAS, the Mohawks of Akwesasne have aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution of Canada, which include the inherent right of self-determination and jurisdiction over their lands, peoples and territory;

AND WHEREAS, the Mohawk Council of Akwesasne is the community government within the territory of Akwesasne and has inherent jurisdiction to make laws, regulations and policies to meet the needs and concerns of the Mohawks of Akwesasne;

AND WHEREAS, the Mohawk Council of Akwesasne intends to preserve the cultural, political and economic integrity of the Mohawk territory and community of Akwesasne;

AND WHEREAS, by 1994/95 and 1995/96-196, Council created the Akwesasne Land Dispute Tribunal;

AND WHEREAS, it is necessary to reaffirm the role and responsibilities of the Akwesasne Land Dispute Tribunal to be outlined in a formal charter;

THEREFORE BE IT RESOLVED, that the Charter for the Akwesasne Land Dispute Tribunal attached hereto is accepted by Council

CARRIED...

Timothy Thompson
GRAND CHIEF

Cheryl Jacobs (y) CHIEF

Conrad Hall (y) CHIEF

John Logie (y) CHIEF

Jan Logie CHIEF

Abenackish CHIEF

John Phillip Jacobson CHIEF

Bill Logie CHIEF

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CHARTER FOR THE AKWESASNE LAND DISPUTE TRIBUNAL

MISSION STATEMENT

- 1.1 *The Akwesasne Land Dispute Tribunal (Land Tribunal) serves the community of Akwesasne by attempting to resolve disputes concerning land rights, water rights and use.*
- 1.2 *The Land Tribunal seeks resolutions to disputes that are fair, reasonable and respectful.*
- 1.3 *The degree and context of judicial independence for The Land Tribunal is the same as that, of Akwesasne Mohawk Court.*
- 1.4 *The Land Tribunal embraces the principles of natural justice characterized by impartial hearings and due process.*
- 1.5 *The Mohawk Council of Akwesasne recognizes the authority granted to the Akwesasne Land Dispute Tribunal under this Charter and, except for those that are the responsibility(ies) of Council described in this Charter, the Council shall not interfere with, or become involved in, the decision making processes of the Land Tribunal.*
- 1.6 *The Land Tribunal is granted original jurisdiction to consider appropriate matters that involve Akwesasne lands within the boundaries of the Mohawk Territory of Akwesasne.*

POWERS/AUTHORITIES

- 2.1 Mohawk Council of Akwesasne by resolution number 1994/95-222 and 1995/96-196 empowered the Akwesasne Land Dispute Tribunal as a judicial body to:
 - a) *make orders relating to land rights, water rights and use.*
 - b) *make rulings on the validity of land titles.*
 - c) *make rulings on the validity of land descriptions.*
 - d) *order investigations to produce information that will assist in the resolution of a real or potential dispute(s) on land rights, water rights and use.*
 - e) *create a special advisory body of community elders knowledgeable on traditional community land protocols and other such subject matter pertinent to disputes.*

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DUTIES AND RESPONSIBILITIES

- 3.1 Subject to this Charter, and any subsequent Land Tribunal General Procedure Regulation adopted by Council Resolution, or any specific provisions in Akwesasne Law, the Land Tribunal is the governing authority to perform the following functions:
- a) to hear disputes within the jurisdiction of the Land Tribunal;
 - b) to ensure that hearings are handled and conducted within generally recognized principles of natural justice and procedural fairness;
 - c) to supervise the transfer of land titles;
 - d) to assist in the development of procedures and guidelines for the Land Dispute Tribunal to be ratified by Council before implementation
 - e) to consult with appropriate MCA departments (ie, housing, Office of Vital Statistics,) when deemed appropriate;
 - f) to receive, review, investigate, or cause to be investigated, and hear disputes or complaints regarding ownership or possession of land;
 - g) to carry out other duties and responsibilities as may be assigned to the Land Tribunal under an Akwesasne Law or resolution of Council.

RECRUITMENT AND SELECTION

- 4.1 Prior to making appointments to the Land Tribunal, Council shall invite applicants from its members of Akwesasne interested in being appointed to the Land Tribunal.
- 4.2 The invitation to apply for the appointment shall be posted in conspicuous places within the Territory of Akwesasne and shall be published in a community newspaper with circulation in the Territory of Akwesasne. The notice shall specify the qualifications and duties necessary for appointment to the Land Tribunal.
- 4.3 Council shall select from the applicants for appointment to the Land Tribunal. Failure to receive the required number of applicants, Council will consider individuals who have received formal mediation or dispute resolution training.

COMPOSITION OF THE LAND TRIBUNAL

- 5.1 The Land Tribunal will be composed of members of the Mohawks of Akwesasne appointed by Council resolution to include at a minimum:
- a) 2 community representatives from the District of Snye
 - b) 2 community representatives from the District of St. Regis; and
 - c) 2 community representatives from the District of Cornwall Island.

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- 5.2 Each member of the Land Tribunal (Tribunal Member) will be selected through a process approved by Council Resolution, taking into account their good character, credibility and reputation in the Akwesasne community and qualifications as described in Section 5.3.
- 5.3 To qualify for an appointment to the Land Tribunal, a person must:
- a) be registered or immediately entitled to be registered as a member of the Mohawks of Akwesasne under the Akwesasne Membership Code (does not include probationary members)
 - b) be twenty-five (25) years of age or older on the appointment date;
 - c) be a resident in the Territory of Akwesasne within the jurisdiction of Council for at least ten years prior to their appointment;
 - d) have good character, credibility and reputation in the Akwesasne community, supported by at least five community references;
 - e) *be knowledgeable of Akwesasne history, customs and traditions especially relating to lands, have an adequate education, work, life experience and possess some training and experience in alternative dispute resolution;*
 - f) not be an elected member of the Mohawk Council of Akwesasne;
 - g) not be a Justice for Mohawk Court;
 - h) not be a member of the Review Commission;
 - i) not have been convicted of an indictable offence in Canada or a felony in the United States within the past ten years of their appointment;
 - j) not have been removed from the Land Tribunal within five years prior to their appointment;
 - k) be in good standing with Mohawk Council of Akwesasne.
 - l) be prepared to receive training and instructions with respect to community land related laws.

TERM

- 6.1 The terms of appointment for Tribunal Members, will be for 4 years. The terms may be renewed.
- 6.2 Council may appoint from time to time persons to act as an alternate Tribunal Member, to replace Tribunal Members who might be in conflict of interest in relation to a case to be heard.
- 6.3 Alternate Tribunal Members are appointed for terms not exceeding one year. The terms may be renewed.

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OATH OF OFFICE

- 7.1 Each Tribunal Member before entering upon his or her duties, will take and abide by the Oath of Office in the form attached as Schedule A, hereto before a Commission for taking Oaths or a Notary Public.

HONORARIUM

- 8.1 Each Tribunal Member sitting on a Tribunal Hearing panel will receive an honorarium for the performance of their duty. The amount and conditions will be in accordance with the terms and conditions established by Council on Honorariums.
- 8.2 The Review Commission will address any change of honorarium in accordance with the Review Commission Procedure Regulations.

MEETINGS

- 9.1 The Land Tribunal will conduct its meetings in accordance to this Charter and any Akwesasne Land Tribunal General Procedure Regulations as adopted by Council Resolution.

HEARINGS

- 10.1 A panel for each hearing will consist of a minimum of three Tribunal Members, selected by the Director of the Akwesasne Justice Department and whenever possible, be comprised of one representative from each of the Districts of TsiSnaihne (Snye), Kanatakon (Saint Regis) and Kawehnoke (Cornwall Island)
- 10.2 All hearings for the Land Dispute Tribunal will be conducted in accordance with the Akwesasne Land Tribunal General Procedure Regulations.
- 10.3 The Tribunal Members selected for a hearing shall select from among themselves, a Chief Tribunal to act as Chairperson for that hearing.

CHAIRPERSON

- 11.1 The Chairperson shall act as a spokesperson for the panel selected for that particular case.

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- 11.2 The Chairperson shall be responsible for organizing, calling and presiding at the hearing conducted by the Land Tribunal and for ensuring the petition and relevant documents are distributed to the Tribunal Members and minutes of the hearing are recorded and maintained by the Land Tribunal in accordance with the Akwesasne Land Dispute Tribunal General Procedure Regulations as adopted by Council Resolution.

VOTING

- 12.1 All matters before the Land Tribunal require a decision by a majority vote of the Tribunal Members sitting on the panel.
- 12.2 No Tribunal Member can abstain on a decision and must vote on any matter before the Land Tribunal.

CONFLICT OF INTEREST

- 13.1 A conflict of interest arises in any situation where a Tribunal Member or a person in their immediate family has interest of gain or loss in the dispute matter under consideration.
- 13.2 For the purposes of this Charter, "immediate family" is a spouse (including a common-spouse) parent, parent-in law, grandparent, brother, sister, child (including adopted child or those living with you as your child) grandchild or any spouse of an immediate family member.
- 13.3 A Tribunal Member who has a conflict of interest must make a declaration to the Director of Akwesasne Justice Department disclosing the nature and extent of their conflict, prior to any hearing. He/she shall not participate in the hearing and an alternate Tribunal Member will be identified.
- 13.4 If the conflict of interest only becomes apparent at a hearing, the Tribunal Member shall declare their conflict at that time and the hearing shall be adjourned until another Tribunal Member is selected to sit for the hearing.
- 13.5 *Where a party to a matter before the Land Tribunal or another Tribunal Member believes that a conflict of interest exists and the Tribunal Member with the conflict of interest has not declared the conflict, the party or other Tribunal Member may make an application to the remaining Tribunal Members for a ruling as to whether a conflict of interest exists, and whether the hearing process has been tainted.*
- 13.6 *Where the ruling has determined a conflict of interest exists and is of a nature that caused no influence on the hearing process, the Tribunal Member will be replaced with an alternate Tribunal Member and the hearing process will resume.*

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- 13.7 *Where the ruling has determined a conflict of interest exists which may have caused an influence on the hearing process, the hearing process shall be declared null and void by the remaining Tribunal Members and selection of new Tribunal Members for a new hearing process will commence.*

CONFIDENTIALITY

- 14.1 Tribunal Members shall not release information received by them in their work with the Land Tribunal or information to the deliberations, proceedings and decisions of the Land Tribunal, unless:
- a) it is information that is public under Akwesasne Law, Code or regulation; or
 - b) it is information the Land Tribunal, by vote of the Tribunal Members, decides to release.

REMOVAL FROM OFFICE

- 15.1 A Tribunal Member will continue to hold office for the appointed term, unless the Tribunal Member:
- a) dies;
 - b) resigns by submitting a notice in writing to Council;
 - c) fails or refuses to sign the Oath Office within ninety (90) days of their appointment or
 - d) no longer qualifies to be a Tribunal Member of the Land Tribunal in accordance with Section 5.3.
 - e) is removed from office pursuant to the provisions this charter.
- 15.2 A Tribunal Member may be subject to removal from the Land Tribunal in accordance with the provision contained in this section, if the Akwesasne Review Commission, in accordance with its Charter and General Procedure Regulations, determines that the Tribunal Member:
- a) engaged in dishonorable or questionable conduct which casts doubt on that member's personal or professional integrity or competence, or reflects adversely to the integrity of the Land Tribunal;
 - b) is convicted of an indictable offence in Canada or a felony in the United States during the term of their appointment;
 - c) breached the oath of confidentiality;
 - d) failed to attend three (3) consecutive hearings of the Land Tribunal without a valid reason as determined by other members of the Land Tribunal;
 - e) is negligent in their duties and responsibilities to the Land Tribunal.
- 15.3 Proceedings to remove a member may be commenced by a written complaint, delivered to the Akwesasne Mohawk Court *Administrator* setting out the grounds for removal signed by:

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- a) a petition signed by 25 eligible voters as defined in the Akwesasne Election Law or any successor Law; or
 - b) a District Chief of Council.
- 15.4 Where a written complaint seeks the removal of a Tribunal Member pursuant to section 15.3, the Court *Administrator* shall forward the complaint to Review Commission.
- 15.5 Where the complaint seeks the removal of a member under a provision contained in section 15.2, the Court *Administrator* shall provide the Tribunal Member with a copy of the complaint and schedule a mediation session involving:
- a) the complainant;*
 - b) the Tribunal Member against whom the complaint is brought; and
 - c) another member of the Land Tribunal selected by the remaining Tribunal Members.
- 15.6 If the Tribunal Member or the complainant or the person who submitted the petition fails to attend the mediation session without providing notice or valid reasons for their absence, the mediation session will not take place and the complaint may be brought to the Review Commission for a decision.
- 15.7 If an agreement is reached in the mediation, a report shall be presented to the Review Commission.
- 15.8 If no agreement is reached in the mediation, the Court Administrator shall forward a copy of the complaint to the Review Commission for their consideration.
- 15.9 Upon receipt of the complaint, the Review Commission shall schedule a meeting to consider whether the Tribunal Member should be removed.
- 15.10 The Tribunal Member shall be given a copy of the grounds for the complaint prior to the meeting and shall have the reasonable opportunity to respond orally or in writing at the meeting.
- 15.11 Where a Tribunal Member is under review as a result of a complaint, that Tribunal Member will be excused from his or her duties and responsibilities to the Land Tribunal pending a determination of the matter.
- 15.12 The Review Commission shall, by majority present at the meeting, determine whether there are sufficient grounds to remove the Tribunal Member and if sufficient grounds exist, shall order that Tribunal Member be removed from office.

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- 15.13 The Tribunal Member shall be provided, in person or by registered mail a copy of the Review Commission's decision on the complaint, including a copy of the order to Council to remove and replace the Tribunal Member.
- 15.14 Subject to any appeal, the Tribunal Members position shall be deem vacant.
- 15.15 Where a Tribunal Member is removed from office, that Tribunal Member may appeal the decision to the Akwesasne Mohawk Court.
- 15.16 The decision of the Akwesasne Mohawk Court on the question of removal is final.

VACANCIES

- 16.1 If the position of a Tribunal Member becomes vacant pursuant to the provisions of this Charter, Council will find a replacement of a member who qualifies under section 3.3 and in accordance with the provisions of this charter.
- 16.2 A vacancy in the membership of the Land Tribunal will not impair the right of the remainder to act, provided there is more than three Tribunal Members remaining

AMENDMENTS

- 17.1 Any amendments to this Charter will be made by Council Resolution and will take effect on the date of the Resolution, or such date as specified in the Resolution. The affected sections of the Charter will be revised accordingly.