

Akwesasne Legislative Commission

Request for Interpretation of an Akwesasne Law

AKWREV-2019-01

RE: Clarification of a provision of the Akwesasne Election Law – Section 16.(2) & 16.(3)

Nature of the Application:

MCA Grand Chief made a request to provide clarification of the Akwesasne Election Law (2019)¹, which was received by the Akwesasne Legislative Commission on November 19, 2019. The Akwesasne Legislative Commission has delegated authority by the Mohawk Council of Akwesasne to make an interpretation of Akwesasne Law pursuant to their Charter (s. 3.2 [h]). The Akwesasne Legislative Commission Regulation Section 8.0 Interpretation of an Akwesasne Law provides the process for the Akwesasne Legislative Commission to the following in making their interpretation.

Issue:

Providing clarification/interpretation on the Akwesasne Election Law (2019) s. 16.2(a), and, as s. 16.2(a) relates to s. 16.3.

Facts:

The following facts were identified in consideration of the evidence outlined in the Supporting Documents² and Interviews with Justice Administration³ which were reviewed on November 22, 2019; November 26, 2019; and December 5, 2019:

Exhibit – 1: Akwesasne Election Regulations, under s. 15.(a) Removal – Vacancy, states,

“A member of the Council is removed from the Council...a petition signed by at least one hundred fifty people **eligible to vote in his district...**”

Exhibit – 4: Akwesasne Election and Voting Regulation, under s. 14.(2)(a) Removal/Vacancy from Council, states,

“A member of the Mohawk Council is removed from Council...a petition...signed by at least 150 **eligible voters from that Chief’s district...**”

¹ AKWREV-2019-01 s. 8.5(A) Request for Clarification – Listing of the Request for Clarification

² AKWREV-2019-01 s. 8.5(B) Supporting Document – Listing of Exhibits 1-30, Attached to this Decision.

³ AKWREV-2019-01 s. 8.5(C) Interview with Justice Administration – Listing of Persons Interviewed

Exhibit – 23: Internal Document, Akwesasne Election Code Draft Dated September 12, 2005 under s. 14.(2)(a) Removal/Vacancy From Council, states,

“A member of the Mohawk Council is removed from Council...a petition...signed by at least 75 **eligible voters from that Chief’s district...**”

Exhibit – 24: Akwesasne Election Law, under s. 16.(2)(a) Removal/Vacancy From Council, states,

“A member of the Mohawk Council is removed from Council...signed by an equal number of votes plus one from the official total number of votes he/she received on election/by election day...”

Interview with L. Thompson (paraphrased):

To be eligible to sign a petition to remove a District Chief from office was intended to only be “eligible voters from that Chief’s district.” In the Akwesasne Election Law (2005) wording, that was the implied effect in the sentence even though it does not explicitly state that. The removal of the reference “eligible voters from that Chief’s district” was by error.

Interview with B. David (paraphrased):

Removal of reference to “eligible voters from that Chief’s district” from the Akwesasne Election Law (2005) subsections on removal from office of a District Chief were made by error. The process to amend the Akwesasne Election Law from the 1994 version into the 2005 version was rushed – the change to this specific section happened between October 2005 and December 7, 2005. It’s obvious from the directions from the community over time that this reference of, “eligible voters from that Chief’s district”, should have stayed in.

Analysis:

The language pattern from the original Akwesasne Election Regulation (1988), Akwesasne Election and Voting Regulations (1994), and draft Akwesasne Election Code (2005) indicate an intention that signatures on a petition for removal from office of a District Chief be, “eligible voters from that Chief’s district.” This intention for signatures to be, “eligible voters from that Chief’s district”, is further supported by the interviews held with persons who were involved in the amendment process at that time.

The amendment process for the Akwesasne Election Law (2005) was done quickly from September 2005 through December 2005, attempting to have the law amendment in place prior to the 2006 General Election. The Working Task Group on this amendment was mainly Council members who worked independently without technical input. With these conditions, it is difficult

to determine if the removal of the language, “eligible voters from that Chief’s district” was intentional or an oversight.

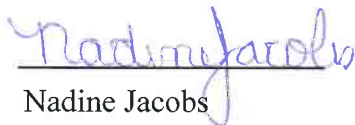
Conclusion:

We believe that the intention of the Working Task Group in drafting s. 16.2(a) may have been:

A petition requesting the removal of a District Chief is signed by an equal number of votes plus one from the official total number of votes he/she received on election/by election day **of eligible voters from that District Chief’s district** and delivered to the Council at a duly convened General Meeting;

However, the actual wording is clearly written as being open to signatories from the community who are eligible to vote from all Districts.

Dated this 9th Day, Tsiiothohrha/December, 2019



Nadine Jacobs
(Kawehno:ke)



Laura Paulette
(Member At Large)



Theresa Thompson
(Tsi Snaihne)

Akwesasne Legislative Commission

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s. 8.5(A) Request for Clarification

- **Request: Clarification of a provision of the Akwesasne Election Law, MCA Grand Chief (November 18, 2019)**

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s. 8.5(B) Supporting Documents

- **Exhibit – 1: MCR 1987/1988-#574** (March 26, 1988), Accept Akwesasne Election Regulations [1988]
- **Exhibit – 2: MCR 1988/1989-#248** (July 26, 1988), Accept Meeting Minutes for Special Meeting Re. Election Regulations of April 5, 1988 [1988]
- **Exhibit – 3: MCR 1989/1990-#474** (December 20, 1989), Petition for Removal of District Chief [1989]
- **Exhibit – 4: MCR 1994/1995-#038** (April 30, 1994), Accept the Akwesasne Election and Voting Regulation [1994]
- **Exhibit – 5: MCR 1994/1995-#110** (May 9, 1994), Accept Meeting Minutes for Special Meeting of April 25, 1994 [1994]
- **Exhibit – 6: MCR 1996/1997-#091** (May 30, 1996), MCA Procedural Regulation Draft Dated April 25, 1996 [1996]
- **Exhibit – 7: MCR 1996/1997-#281** (October 7, 1996), Amendment to s. 13.6 of MCA Procedural Regulation [1996]
- **Exhibit – 8: Internal Memo To File**, Author: L. Thompson [1997]
- **Exhibit – 9: MCR 1998-1999-#111** (June 9, 1998), Repealed MCA Procedural Regulation and Replaced with Draft Dated June 9, 1998 [1998]
- **Exhibit – 10: MCR 1998/1999-#275** (September 30, 1998), Repealed MCA Procedural Regulation and Replaced with Draft Dated August 27, 1998 [1998]
- **Exhibit – 11: MCR 2000/2001-#484** (March 5, 2001), Rescind MCR 1998/1999-#275 and Replace with Draft Dated April 12, 2001 [2001]
- **Exhibit – 12: MCR 2000/2001-#493** (March 19, 2001), Rescind MCR 2000/2001-#275 and Revert to Draft Dated August 27, 1998 [2001]
- **Exhibit – 13: MCR 2000/2001-#497** (March 19, 2001), Amendment to s. 11.1 of MCA Procedural Regulation [2001]
- **Exhibit – 14: MCR 2001/2002-#223** (August 20, 2001), Rescind all previous MCRS relating to Council Procedures and Replace with Draft Dated July 30, 2001 [2001]
- **Exhibit – 15: Internal Memo**, Author: B. David [2002]
- **Exhibit – 16: MCR 2002/2003-#046** (May 2, 2002), Accepts Petitions: Akwesasne Election and Voting Custom Regulation: Procedural Guidelines Removal of a District Chief [2002]
- **Exhibit – 17: MCR 2002/2003-#220** (September 26, 2002), Petition for Removal of Grand Chief [2002]
- **Exhibit – 18: General Meeting Minutes Excerpt** from October 27, 2005 [2005]

- **Exhibit – 19: Special Meeting Minutes Excerpt** from November 15, 2005 [2005]
- **Exhibit – 20: Special Meeting Minutes Excerpt** from November 22, 2005 [2005]
- **Exhibit – 21: Press Release** Announcing Akwesasne Election Law Amendment [2005]
- **Exhibit – 22: Internal Document**, Akwesasne Election Law Draft Amendment, dated August 18, 2005 [2005]
- **Exhibit – 23: Internal Document**, Akwesasne Election Code Draft Amendment, dated September 12, 2005 [2005]
- **Exhibit – 24: MCR 2005/2006-#192** (December 8, 2005), Approve the Akwesasne Election Law [2005]
- **Exhibit – 25: MCR 2005/2006-#247** (January 26, 2006), Accept General Meeting Minutes of December 8, 2005 [2005]
- **Exhibit – 26: Internal Chapter**, Draft History on Election, Author: L. Thompson, dated March 27, 2008 [2008]
- **Exhibit – 27: MCR 2013/2014-#277** (December 16, 2013), Repeal all previous MCRS and Replace with MCA Procedure Regulations dated December 2013 [2013]
- **Exhibit – 28: MCR 2015/2016-#105** (August 13, 2015), Petition for Removal of District Chief [2015]
- **Exhibit – 29: MCR 2018/2019-#200** (September 27, 2018), Petition for Removal of District Chief [2018]
- **Exhibit – 30: MCR 2019/2020-#212** (September 28, 2019), Approve the Akwesasne Election Law [2019]

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s. 8.5(C) Interview with Justice Administration

The following individuals were working for the Akwesasne Justice Department at the time the change occurred to the Akwesasne Election Law provisions under review:

- **Interview – 1: Louise Thompson**, former Akwesasne Justice Department – Justice Coordinator (Interview Date: December 5, 2019)
- **Interview – 2: Brian David**, former Akwesasne Justice Department – Director (Interview Date: December 5, 2019)