



Akwesasne Banishment Law

Kaiahnehronshera iehiontakwa Number: 2015-01

Mohawk Council Resolution: 1999/2000-#098

Date Enacted: June 3, 1999

Coming into Force: October 1, 1999

AKWESASNE MOHAWK COUNCIL RESOLUTION
1999/2000-# 98



THE	MOHAWK COUNCIL OF AKWESASNE		CURRENT CAPITAL BALANCE	\$ _____
AGENCY	SOUTHERN ONTARIO DISTRICT		COMMITTED	\$ _____
PROVINCE	ONTARIO / QUEBEC		CURRENT REVENUE BALANCE	\$ _____
PLACE	St.Regis Recreation Center		COMMITTED	\$ _____
DATE	3 DAY	June MONTH	1999 YEAR	

DO HEREBY RESOLVE:

MOVED: Steve ThomasSECONDED: Georgy Adams

Whereas, the Mohawk Council of Akwesasne held a Special General Meeting in November 1997, in order to discuss local drug problems with the community; and

Whereas, the community consequently instructed Mohawk Council and the Akwesasne Justice Department to develop laws addressing any such local drug problems; and

Whereas, the Legislative Committee of the Justice Department subsequently developed proposed Drug and Banishment Laws after consulting the community through focus group meetings, district meetings, radio-talk shows, newspaper publications, and direct home-mailings of Legislative Committee proposals; and

Whereas, the community was presented with the final proposed draft Drug and Banishment Laws at a Special General Meeting on April 8, 1999; and

Whereas, the community subsequently instructed Mohawk Council to determine the community's acceptance of the proposed Laws by way of Referendum of eligible voters on May 29, 1999; and ^{whereas,} the Referendum question, "Do you accept and ratify the Drug and Banishment Laws as Akwesasne Mohawk Laws?" was posed to the eligible voters, in accordance with the Akwesasne Election and Voting Custom Regulations, on May 29, 1999; and

Whereas, the official results of the voting are as follows:

Yes - 236
No - 53; and

Whereas, the appeal period for contesting any aspect of the Referendum, pursuant to the provisions of the Akwesasne Election and Voting Custom Regulations, expired at 5:00 p.m. on June 3, 1999;

FOR DEPARTMENTAL USE ONLY					
1. BAND FUND CODE	2. COMPUTER BALANCE		3. EXPENDITURE	4. AUTHORITY -- INDIAN ACT	5. SOURCE OF FUNDS <input type="checkbox"/> CAPITAL <input type="checkbox"/> REVENUE
	CAPITAL \$ _____	REVENUE \$ _____			
6. RECOMMENDED			APPROVED		
DATE	RECOMMENDING OFFICER		DATE	APPROVING OFFICER	

FILE REFERENCE

AKWESASNE MOHAWK COUNCIL RESOLUTION

1999/2000-# 98



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DATE	<u>3</u> <u>June</u> <u>1999</u> DAY MONTH YEAR		

DO HEREBY RESOLVE:

MOVED: Steve Thomas
SECONDED: George Adams

Therefore Be It Resolved that the Mohawk Council of Akwesasne formally accepts the results of the Referendum conducted on May 29, 1999, and hereby proclaims that the proposed Akwesasne Drug Law and the Akwesasne Banishment Law shall become official legislation of the Mohawk community of Akwesasne on October 1, 1999.

carried

GRAND CHIEF

CHIEF

Timothy Thompson
CHIEF

Vaugh Phillips
CHIEF

George Adams
CHIEF

Timothy Thompson
CHIEF

Kevin Roundpoint
CHIEF

CHIEF

CHIEF

CHIEF

CHIEF

THIS MEETING TOOK PLACE IN THE TERRITORY OF AKWESASNE, WITH THE FOLLOWING MEMBERS OF THE AKWESASNE MOHAWK COUNCIL PRESIDING.

RECORDED VOTE:

FOR: _____

AGAINST: _____

ABSTENTION: _____

FOR DEPARTMENTAL USE ONLY

BAND FUND CODE	2. COMPUTER BALANCE		3. EXPENDITURE	4. AUTHORITY — INDIAN ACT	5. SOURCE OF FUNDS <input type="checkbox"/> CAPITAL <input type="checkbox"/> REVENUE
	CAPITAL \$ _____	REVENUE \$ _____			
RECOMMENDED			APPROVED		
RECOMMENDING OFFICER	DATE		APPROVING OFFICER		

MOHAWK COUNCIL OF AKWESASNE
February 19, 1999
AKWESASNE BANISHMENT LAW

PREAMBLE

WHEREAS the Mohawk Council of Akwesasne is taking all means necessary to protect the people, and especially the children of the community against the harmful effects of illicit acts and behavior;

WHEREAS Mohawk society has traditionally recognized the importance of the collective rights of the community and the priority of those collective rights over individual rights;

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 includes self-determination and control over lands, people and resources;

WHEREAS the Mohawk Council of Akwesasne intends to preserve the cultural, political and social integrity of the Mohawk Territory and community of Akwesasne;

WHEREAS the community of Akwesasne wishes to develop a law to punish persons who breach community standards of behavior.

WHEREAS Akwesasne is concerned about the treatment of young persons breaching community standards and will address persons under eighteen (18) years of age in a separate law;

WHEREAS banishment has historically been the method of punishment used by the Mohawk people to penalize members who have harmed the community by offending the community standards of behavior and is the traditional method of punishment for those persons;

WHEREAS this Law, together with the Membership Code, is based on Mohawk customary law which enables the community to expel people who refuse to abide by standards of behavior set out by the community. Consistent with Mohawk Customs, this Law provides, through the warning system, that before such a person is banished they must be given an opportunity to change their ways;

WHEREAS the community of Akwesasne has been consulted through a series of meetings and has given direction to the Mohawk Council to develop a Law to banish a person eighteen (18) years of age or older who has breached community standards of behavior;

WHEREAS this Law establishes banishment procedures when such a measure is mandated in Akwesasne Laws.

THE MOHAWK COUNCIL OF AKWESASNE THEREFORE ENACTS THE PRESENT LAW.

PREAMBLE

1. The preamble forms part of this Law.

TITLE

- 2.1 This Law may be referred to as the “*Akwesasne Banishment Law*”

DEFINITIONS

- 3.1 In this Law:

“Akwesasne Appeal Tribunal” means that body established by Council and composed of trained community Members which is responsible for hearing appeals under this Law;

“Akwesasne Law” means a law enacted pursuant to the Mohawk Council of Akwesasne Law Enactment Procedure;

“Banishment or *Ahonwanakerakwahte*” means expulsion from the Community, the loss of the right to enter the Territory and, in the case of Members of Akwesasne, the loss of all membership rights as defined in the Membership Code;

“Council” is the Mohawk Council of Akwesasne;

“Court” means the Akwesasne Mohawk Court exercising jurisdiction within the Territory of Akwesasne;

“Court Clerk” means the Clerk of the Akwesasne Mohawk Court;

“Eligible Voter” means a person eligible to vote pursuant to the Akwesasne Election and Voting Custom Regulations;

“Justice Department” means the Akwesasne Justice Department;

“Member” means a person registered or entitled to be registered as a member of Akwesasne under the Akwesasne Membership Code;

“Order” means the Banishment Order or Special Banishment Order;

“Police” means the Akwesasne Mohawk Police Services or a member thereof;

“Prosecutor” means the official retained by MCA to prosecute offenses under this Law, and includes the Office of the Prosecutor;

“Rescind” means the canceling or lifting of an order;

“Respondent” means the person subject to banishment proceedings;

“Territory” means the geographic area over which the Mohawk Council of Akwesasne has jurisdiction.

APPLICATION OF THE LAW

- 4.1 This Law applies to all persons eighteen (18) years of age or older residing in or entering onto the Territory.

MOHAWK COURT

- 5.1 The Mohawk Court has jurisdiction regarding all matters relating to this Law, including all matters relating to the interpretation and application of this Law.

AKWESASNE MOHAWK POLICE SERVICES

- 6.1 Akwesasne Mohawk Police Services shall have jurisdiction to carry out the duties prescribed to them under this Law. Such jurisdiction shall include the enforcement of an Order.

BANISHMENT PROCEDURES

- 7.1 Where an Akwesasne Law provides for banishment, and conditions for a request have been met, proceedings shall be initiated by the Prosecutor, by filing an Application for Banishment.
- 7.2 An Application for Banishment shall be deposited with the Court Clerk. If the Application for Banishment is complete, the Court Clerk shall:
- a) register the application; and
 - b) set a date for the Court to hear the application.

NOTICE TO RESPONDENT

- 8.1 The Court Clerk shall, by personal service or by registered mail, send the Notice for Banishment Proceedings to the Respondent setting out the date, time, and place for the hearing and a certified copy of the Application filed with the Court Clerk pursuant to section 7.2.

PUBLIC NOTICE OF APPLICATION

- 9.1 The Court Clerk shall place a Notice of the Banishment Proceedings in at least one community newspaper setting out:
- a) the Respondent's name; and
 - b) the deadline date to receive requests to make representations concerning the Application for Banishment.
- 9.2 The notice in section 9.1 must be given at least ten days prior to the deadline date, in order to give individuals the opportunity to advise the Court Clerk that they wish to make representations to the Court.

- 9.3 Person(s) who have, prior to the deadline date, advised the Court Clerk of their wish to make representations to the Court in relation to the application shall be informed of the date, place and time for the Hearing.

HEARING PROCEDURE

- 10.1 Subject to section 10.2, hearings will be open to the public.
- 10.2 The Court may exclude any or all members of the public from the whole or part of a hearing if it determines an open hearing would:
- a) compromise confidential information; or
 - b) prejudice the ability of any party to make representations; or
 - c) adversely affect the maintenance of order and the proper administration of justice; or
 - d) not be in the community's best interest.
- 10.3 The Court may order a publication ban of any or all evidence given at a hearing.
- 10.4 The Prosecutor and the Respondent may summon witnesses to give evidence before the Court in relation to the Application.
- 10.5 The Court will first hear from the Prosecutor who shall explain the grounds for requesting banishment and present any witnesses for the application.
- 10.6 The Respondent has the right to question witnesses presented by the Prosecutor. The Respondent shall question such persons immediately after they have given their evidence.
- 10.7 After completion of the Prosecutor's evidence, the Respondent and any witnesses they wish to present shall give evidence to the Court.
- 10.8 The Prosecutor has the right to question witnesses presented by the Respondent. The Prosecutor shall question such persons immediately after they have given their evidence.
- 10.9 After completion of the Prosecutor and Respondent's witnesses, any other persons who have indicated a desire to give evidence to the Court may, with permission of the Court, present their evidence.
- 10.10 The Prosecutor, the Respondent and the Court shall be entitled to question persons who, in accordance with section 10.9, have given evidence.
- 10.11 The Respondent may be represented by a lawyer. In special circumstances and with permission of the Court, witnesses appearing at a hearing may be represented by legal counsel.

- 10.12 If the Court deems it appropriate, it may keep the identity of any individual or witness confidential, provided that such confidentiality does not unduly prejudice the Respondent.
- 10.13 If the Respondent is unavailable for the hearing, the Respondent must give a valid reason. The Court shall then decide whether to reschedule the hearing.
- 10.14 In the event the Respondent fails to attend the hearing without providing a valid reason, the hearing may take place in their absence.
- 10.15 Evidence shall be given under oath.
- 10.16 The membership rights of an Akwesasne member cannot be used as a defense against a possible order of banishment from the community.
- 10.17 The Court may adjourn any hearing in order to make a decision.

RECORDING OF HEARING

- 11.1 The hearing shall be recorded, and the recording shall be kept with the Court Clerk until the appeal period for the Court's decision has expired.

PRE-DISPOSITION REPORT

- 12.1 Prior to making a decision the Court may request a Pre-disposition Report concerning the respondent.
- 12.2 The Pre-disposition Report shall contain information concerning:
- a) the character, behavior and attitude of the person and their willingness to change their conduct;
 - b) future plans of the person including any proposed steps to improve themselves;
 - c) past history of the person both in the community of Akwesasne and outside;
 - d) past and present family background and relations; and
 - e) any other information relevant to the person's background, conduct or family relations.
- 12.3 The Pre-disposition Report shall be filed with the Court and served on the Prosecutor and the Respondent, personally or by registered mail.
- 12.4 After the Pre-disposition Report has been filed and served in accordance with section 12.3, the person preparing the report shall be called as a witness.
- 12.5 The Court, the Prosecutor and the Respondent shall be entitled to question the person preparing the Pre-Disposition Report concerning its preparation and matters raised in the report.

12.6 The Court will ensure that all avenues for rehabilitation have been exhausted before rendering a decision regarding banishment.

THE DECISION OF MOHAWK COURT

13.1 After consideration of all the documents, evidence and presentations relevant to the application, the Court shall:

- a) dismiss the application;
- b) make an order without provisions for an Application to Rescind the Order; or
- c) make an order with conditions for an Application to Rescind the Order.

CONDITIONS ATTACHED TO BANISHMENT ORDERS

14.1 The Courts may, for rehabilitation purposes, set conditions for a time period and the circumstances under which a person may apply for an Application to Rescind the Order.

14.2 Unless the Court provides conditions for an Application to Rescind the Order, all Orders shall be set for life.

NOTICE OF DECISION OF THE COURT

15.1 The decision of the Court shall be served on the Respondent by personal service or by registered mail and on the Prosecutor by providing a copy of the decision to the Prosecutor's office.

15.2 The Court Clerk shall provide a copy of any decision to the Akwesasne Mohawk Police Service, the Mohawk Council of Akwesasne, the Akwesasne Membership Board and any other Department that the Court deems appropriate.

PUBLIC NOTICE OF THE MOHAWK COURT DECISIONS

16.1 The decision of the Court shall be published in at least one community newspaper and posted in a public place in each district.

APPEAL AND RESIDENCY

17.1 An Order is enforceable immediately after the expiry of the appeal period or, if an appeal is filed, immediately after the judgment of the Akwesasne Appeal Tribunal is rendered.

17.2 The subject of an Order may, subject to any other Law, reside in the community until they have been served with the Order, or in the case of an appeal, until the decision of the Akwesasne Appeal Tribunal is rendered.

APPEAL PROCESS

- 18.1 The Akwesasne Appeal Tribunal has jurisdiction in all matters relating to appeals from the Court's decision regarding the denial or issuance of an Order or any conditions attached to an Order.
- 18.2 The Appeal must be presented to the Court Clerk by the Appellant within five (5) days of the service of the decision and shall be commenced by filing a Notice of Appeal with the Court Clerk.
- 18.3 The Appellant may request the Akwesasne Appeal Tribunal to issue, remove or modify any conditions of an Order.
- 18.4 The Notice of Appeal must contain detailed reasons why an Order should be granted or set aside, or why the conditions should be modified.
- 18.5 The Court Clerk shall provide the Akwesasne Appeal Tribunal with:
 - a) a copy of the Notice of Appeal;
 - b) a copy of the decision for the Court;
 - c) all documents filed with the Court in relation to the Application;
 - d) any Pre-disposition Report filed; and
 - e) a recording of the hearing.
- 18.6 The Akwesasne Appeal Tribunal shall consider all submissions and documents filed with the Appeal and determine whether there are sufficient grounds to hear an appeal.
- 18.7 In the event the Akwesasne Appeal Tribunal determines that there are not sufficient grounds for an appeal, it shall give a written decision with reasons. The Akwesasne Appeal Tribunal's decision shall be served on the Appellant in person or by registered mail.
- 18.8 In the event the Akwesasne Appeal Tribunal decides to hear the Appeal, it shall schedule the time, date and place for the hearing and provide written notice to the Appellant. Where the Prosecutor is the Appellant, notice shall also be provided to the person(s) against whom an Order is sought. Where the Appellant is the party subject to an Order, notice shall also be provided to the Prosecutor.
- 18.9 The rules governing publications and hearings in section 9 to section 11 shall apply to appeals, except that references to the Notice of Banishment Proceedings, Prosecutor, Respondent and Court shall be understood to mean Notice of Appeal Proceedings, Appellant, Party in Reply and Akwesasne Appeal Tribunal.

18.10 After considering the evidence, the Akwesasne Appeal Tribunal shall:

- a) confirm the Order; or
- b) remove the Order; or
- c) modify or establish conditions in the Order.

NOTICE OF THE AKWESASNE APPEAL TRIBUNAL'S DECISION

19.1 The Akwesasne Appeal Tribunal's decision shall be delivered in person or by registered mail to the Appellant and the Party in Reply.

19.2 The Akwesasne Appeal Tribunal shall provide a copy of any decision to the Akwesasne Membership Board, Akwesasne Mohawk Police, the Mohawk Council of Akwesasne, and any other department the Akwesasne Appeal Tribunal deems appropriate.

19.3 Any decision made by the Akwesasne Appeal Tribunal with respect to an appeal shall be published in at least one community newspaper and posted in a public place in each district.

TIME PERIOD

20.1 The Akwesasne Appeal Tribunal has twenty (20) working days to render a judgement on the appeal.

NOTIFICATION TO OTHER COMMUNITIES IN THE IN THE IROQUOIS CONFEDERACY

22.1 A copy of the Order shall be sent by the Justice Department to the Councils of all other communities of the Iroquois Confederacy.

ENFORCEMENT OF BANISHMENT ORDERS FROM OTHER TRIBUNALS

23.1 A person who is the subject of an Order or equivalent judgement or ruling from another First Nations Court, Tribunal or Board of competent jurisdiction may not enter into or reside on the Territory.

23.2 The Prosecutor shall present a certified copy of the judgement or ruling from another jurisdiction to the Court for certification as a Mohawk Court Order.

23.3 A certified copy of judgement or ruling signed by the Clerk of the Court or other officer having custody of the records of the Court in which the judgement or ruling was issued shall be deemed conclusive proof of judgement or ruling.

23.4 Once the Court has certified a judgement or ruling from another Court or Tribunal, it shall become an Order of the Court and the Police shall have the power to enforce the Order in the Territory.

- 23.5 Any person who becomes aware that a person living in the Territory is subject to a judgement or ruling equivalent to a Banishment Order from a Court, Board or Tribunal of another First Nation, shall notify the Prosecutor's Office which shall conduct an investigation to determine whether it should be certified as a Mohawk Court Order.

HARBOURING A PERSON SUBJECT TO AN ORDER

- 24.1 It is an offense to harbour, knowingly or with willful blindness, a person who is the subject of an Order.
- 24.2 Any person who violates section 24.1 of this law is liable upon summary conviction to a fine not exceeding \$1,000.00.

APPLICATION TO RESCIND AN ORDER

- 25.1 A person seeking to Rescind an Order, in accordance with the provision of an Order, shall file with the Court Clerk, an Application to Rescind. The Application shall contain sufficient information to demonstrate that the person has rehabilitated themselves and no longer poses a threat to the community.
- 25.2 If the Application to Rescind is completed and in compliance with the conditions in an Order, the Court Clerk shall:
- a) register the Application; and
 - b) set a date for Court to hear the application.
- 25.3 The Court Clerk shall provide a copy of the Application to Rescind to the Prosecutor.
- 25.4 The rules governing publication and hearings in section 9 to section 12 shall apply to Applications to Rescind provided that references of Notice of Banishment Proceedings shall mean Notice of Application to Rescind, references to the Respondent (person subject to the proceedings) shall mean the Applicant and the Applicant shall be the first to present their evidence and witnesses.

DECISION OF THE COURT

- 26.1 After consideration of all the documents, evidence and presentations relevant to the Application to Rescind, the Court shall:
- a) rescind the Order; or
 - b) dismiss the application; or
 - c) modify or establish conditions in an Order.

NOTICE OF THE DECISION OF THE COURT

- 27.1 The decision of the Court shall be served on the Applicant in person or by registered mail and served on the Prosecutor by providing a copy of the decision to the Prosecutor's Office.
- 27.2 The Court Clerk shall provide a copy of any decision to the Akwesasne Membership Board, Akwesasne Mohawk Police Service, and any other Department that the Court deems appropriate.
- 27.3 The Decision of the Court shall be published in at least one community newspaper and posted in a public place in each district.

APPEAL PROCESS

- 28.1 The Akwesasne Appeal Tribunal has jurisdiction in all matters relating to appeals for the Court's decision on Application to Rescind.
- 28.2 The rules governing appeals in sections 18, 19 and 20 apply to appeals of the Court's decision on an Application to Rescind.

REINSTATEMENT OF MEMBERSHIP

- 29.1 A person whose Order has been rescinded by the Akwesasne Appeal Tribunal may apply for membership in accordance with the provisions of the Membership Code.

TRESPASS

- 30.1 Notwithstanding provisions in any other law, a person subject to an Order may not enter or stay in the Territory except in compliance with the Order or unless they obtain a Visitor's Permit.
- 30.2 Any person found within the Territory in violation of an Order, and without a Visitor's Permit, shall be charged with trespass and expelled immediately.

VISITOR'S PERMIT

- 31.1 Unless conditions in an Order provide otherwise, a person subject to an Order who wishes to visit the community for compassionate reasons (death of a family member, visit to an Elder, family member with health problems, or other similar grounds), must apply to the Chief of Police or Officer in Charge for a Visitor's Permit. Any permit issued shall be for a period not exceeding 72 hours and may require that the person be supervised by a responsible, named Member of the community. This permit must be handed in at the Police station at the end of the visiting period.

31.2 Any person not respecting conditions in an Order or Visitor's permit shall be expelled from the community immediately.

ADMINISTRATION

32.1 The Akwesasne Justice Department shall be responsible for administration of this Law.

32.2 Nothing in this Law shall operate to prevent a person from being investigated, charged or convicted pursuant to any other validly enacted law.

32.3 Service of a document shall be by personal service or by registered mail. Proof of service shall be filed with the Court or, in cases of appeal, with the Akwesasne Appeal Tribunal.

32.4 Upon enactment of this Law, Council shall, within fourteen (14) days pass a resolution declaring the Law to be in force on the date of the resolution or such later date as specified.

AMENDMENTS

33.1 Amendments to this Law shall be initiated by:

- a) a motion passed by Council setting out the proposed amendments; or
- b) a petition presented to Council signed by at least 75 eligible voters from each district, setting out the proposed amendments.

33.2 Upon the amendment process being validly initiated in accordance with section 33.1, the Legislative Commission shall prepare a draft amended law indicating the amended provisions.

33.3 The draft amended law shall be presented by the Legislative Commission at a General Meeting by reading a summary of the proposed law explaining the amendments and making available a full text of the amended law to the community members.

33.4 At least seven (7) days prior to the General Meeting, Council shall give notice to the community, through the local media, of the full text of the draft amended law and make copies available to community members.

33.5 After presentation at the General Meeting, the Legislative Commission shall hold information meetings in each District to explain the amendments and receive comments and recommendations from community members.

33.6 Reasonable efforts shall be made through the local media or through the information meetings to explain the amendments in the Mohawk Language.

- 33.7 The Legislative Commission shall prepare a final draft amended law taking into consideration the information received at the information meetings and responses from community members to the draft amended law.
- 33.8 Council shall schedule a Special General Meeting for the purposes of considering the final draft amended law.
- 33.9 Notice shall be given to the community through the local media at least seven days prior to the Special General Meeting. The full text of the final draft will be included in the notice and copies made available to community members
- 33.10 At the Special General Meeting, a vote by eligible voters present shall be taken on the final draft amended law. If a majority of eligible voters approve the final draft, the amendments shall be deemed valid and enacted.

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