



# Akwesasne Emergency Management Law

Final Draft for Phase IV Enactment of Law

As approved by: MCR 2022/2023 - #185

Dated: July 31, 2023

Initialed & Dated by Director of Justice: \_\_\_\_\_

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## **Preamble**

WHEREAS:

The Mohawks of Akwesasne have the existing and inherent right of self-determination within their Territory.

The Mohawks of Akwesasne have aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution of Canada.

The Mohawks of Akwesasne have the right to preserve and promote the health, safety, and welfare of members during emergencies, and to maintain law and order in the Territory.

As the community government within the Territory, the Mohawk Council of Akwesasne exercises the inherent jurisdiction to make laws, regulations, and policies to meet the needs and concerns of the Mohawks of Akwesasne.

The Akwesasne Joint Emergency Operations Plan, approved by the Mohawk Council of Akwesasne through MCR 2017/2018 - #011 dated April 10, 2017, makes provisions for extraordinary emergency response measures to safeguard the health, safety, welfare, property, environment, and economy of the community in emergency situations.

The Mohawk Council of Akwesasne wishes to provide comprehensive emergency management, to plan, prepare, respond, and recover from emergencies.

## **Purpose**

The purpose of this Law is to:

- a) protect the health, safety, and welfare of persons within the Territory during a declared State of Emergency;
- b) protect the environment and economy within the Territory;
- c) implement emergency response measures that are appropriate for Akwesasne;
- d) harmonize Akwesasne's emergency response measures with neighbouring jurisdictions; and
- e) provide guidance with respect to the enforcement of emergency orders in Akwesasne.

## Section 1.0 Title

1.1 This Law shall be known as the Akwesasne Emergency Management Law.

## Section 2.0 Definitions & Acronyms

2.1 The following definitions and acronyms apply in this regulation:

“**Akwesasne Law**” means a Law or code enacted by the Mohawks of Akwesasne;

“**ALEPR**” means the Akwesasne Legislative Enactment Procedural Regulations;

“**ATIPP**” means the Access to Information & Privacy Policy;

“**Animal**” means household pets, does not include livestock or exotic animals;

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

“**Emergency**” means any situation, whether natural, technological, or human-caused, intentional or unintentional, that requires responsive action to protect life, property, the environment, or the economy;

“**Enforcement Officer**” means an Officer of the Akwesasne Mohawk Police Service and any other person authorized by Council to enforce Akwesasne Laws;

“**Emergency Order**” means an order issued by Council under subsection 6.3;

“**MCA**” means the Mohawk Council of Akwesasne;

“**Paramountcy**” means highest in rank, power and authority;

“**Regulation**” means the guidelines made by Resolution for the purpose of setting out procedures and administrative matters for this Law;

“**Resolution**” means a Mohawk Council Resolution (MCR) formally adopted by Council pursuant to its governing authority;

“**State of Emergency**” means the declaration which usually suspends a few normal functions or operations of the executive, legislative and judicial powers, alerts its members to change their normal behaviour, or order government agencies to implement emergency management plans;

**“Territory”** means Akwesasne Lands including the lands, resources, and waters which the Mohawk Council of Akwesasne has jurisdiction, and for greater certainty includes;

- a) Kawehnoke (Cornwall Island) and any island within Ontario;
- b) Kanatakon (St. Regis Village);
- c) Tsi Snaihne (Chenail/Snye);
- d) Enskatsikakwenote (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 Akwesasne operation of Law.

## Section 3.0 Interpretation

### 3.1 Interpretation:

- a) words in singular include the plural, and words in the plural include the singular;
- b) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;
- c) the expression “shall” is to be understood as mandatory and the expression “may” is to be understood as optional;
- d) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”;
- e) a reference to an Akwesasne Law, Charter or Regulation includes any amendment, replacement or successor of that Akwesasne Law, Charter or Regulation;
- f) a “person”, in addition to a natural person, includes a corporation, partnership, agency, government or any agent, employee, successor or legal representative of such person to whom the context can apply according to law;
- g) a reference to the Akwesasne Court, board, commission, body, or tribunal in this Law includes any successor body established by Akwesasne Law or Resolution carrying out all or some of the functions; and
- h) a reference in an Akwesasne Law, Charter or Regulation to a Mohawk Justice or a Justice of the Akwesasne Tekaiia'torehthà:ke (Akwesasne Court) includes a Ratiianerenhserakweniéhstha (Justice) and where context requires Teshatíia'toréhtha (Appeal Justice).

3.2 Words in this Law referring to an enforcement officer, by name of office or otherwise, also apply to any person designated by the Council to act in the enforcement officer's place or to any person assigned or delegated to act in the enforcement officer's place under this Law.

3.3 Age of Majority – Unless otherwise provided in an Akwesasne Law or Regulation, the age of majority is eighteen (18) years old.

## **Section 4.0 Application**

4.1 This Law applies throughout the Territory to all persons in the Territory.

## **Section 5.0 Declaration of a State of Emergency**

5.1 The Mohawk Council of Akwesasne may, by resolution, declare that a State of Emergency exists in the Territory or in any specific part of the territory.

## **Section 6.0 Council Powers During a State of Emergency**

6.1 Council may exercise the powers set out in this section during a declared State of Emergency in a manner consistent with the purpose of this Law.

6.2 Council may hold meetings and adopt resolutions by any means that permits the members of Council to communicate effectively with each other.

6.3 During a declared State of Emergency Council may issue Emergency Orders that Council believes are necessary and essential in the circumstances to prevent, reduce, mitigate, or respond to or recover from serious harm to life, property, the environment or the economy if in the opinion of the Council it is reasonable to believe that:

- a) the harm or damage will be alleviated by an order; and
- b) making an order is a reasonable alternative to other measures that might be taken to address the emergency; and
- c) the actions authorized by an order shall be exercised in a manner which, consistent with the objectives of the order, limits their intrusiveness; and
- d) an order shall only apply to the areas of the Territory where it is necessary; and
- e) an order shall be effective only for as long as it is necessary.

6.4 Consistent with subsection 6.3, Council may issue Emergency Orders in relation to the following subjects:

- a) the implementation of emergency plans for the Territory;
- b) the coordination of emergency response measures with neighbouring jurisdictions;
- c) the control or prohibition of entry to and exit from the Territory and all forms of travel within the Territory;

- d) the isolation or quarantine of any person, or any class of persons, residing permanently or temporarily in the Territory;
  - e) the establishment or modification of a curfew;
  - f) the establishment of facilities for the care, welfare, safety, and shelter of individuals, including emergency shelters;
  - g) the closing of any place, whether public or private, business, office, school, clinic, or other establishment or institution;
  - h) the procurement and distribution of necessary goods, services, and resources;
  - i) the authorization of one or more persons to render services of a type they are reasonably qualified to provide;
  - j) the authorization of one or more health or public safety officials of neighbouring jurisdictions to implement emergency response measures in the Territory;
  - k) such other emergency response measures as the Council deems necessary to respond to the declared State of Emergency;
  - l) evacuating individuals and animals and removing personal property from any specified area and making arrangements for the adequate care and protection of individuals, animals, and property;
  - m) to prevent, respond to or mitigate the effects of the emergency, by constructing, restoring necessary facilities, and appropriating, using, destroying, removing, or disposing of property; and
  - n) order to collect information that is:
    - subject to the order must be used to prevent, respond, to or alleviate the effects of the emergency and for no other purpose; and
    - subject to the order that is personal information within the meaning of ATIPP is subject to any law with respect to the privacy and confidentiality of personal information when the declared emergency is terminated.
- 6.5 The Mohawk Council of Akwesasne may authorize the Executive Director to temporarily implement one or more of the following emergency response measures for the purpose of responding to the emergency only:
- a) modify or suspend the application of human resource policies, procedures, schedules, job descriptions, and any other administrative measures relating to employment;
  - b) issue emergency directives to Mohawk Council of Akwesasne employees, agents, and service providers;
  - c) incur expenses or enter into contracts relating to emergency response measures;
  - d) Where possible, seek cooperation and approval for use of facilities, infrastructure, and property for emergency management purposes and restore property to original state.
- 6.6 Council must also maintain its authorities and duties as prescribed within the Akwesasne Joint Emergency Operations Plan.

## **Section 7.0 Emergency Executive Committee**

- 7.1 The Mohawk Council of Akwesasne's Grand Chief and Council have the primary responsibility as a governing body to provide protection to the members of Akwesasne in an actual or potential emergency disaster. The MCA must provide leadership and direction to prevent, mitigate, respond to and recover from the effects of a disaster in its territory.
- 7.2 To respond to an emergency more effectively within the Territory, the Mohawk Council of Akwesasne may, by Resolution, appoint an emergency executive committee to create Emergency Orders in respect to some or all the subjects set out in subsection 6.4.
- 7.3 Council shall determine the composition of the emergency executive committee which may include elected members of Council, the Executive Director and other members of senior management appointed by Council, and technicians employed by Council.
- 7.4 Council will supervise the emergency executive committee and may, by Resolution approve, nullify, or modify any Emergency Order issued by the emergency executive committee.

## **Section 8.0 Enactment of Laws**

- 8.1 During a declared State of Emergency, the Mohawk Council of Akwesasne may temporarily suspend or amend, for a period of time that is no longer than the length of the declared State of Emergency and only for the purposes of responding to the emergency, a law or laws or parts of a law or laws".
- 8.2 Council may, by Resolution, declare a law of Canada or of a neighbouring province, state, counties, and the St. Regis Mohawk Tribal Council to be applicable within the Territory for the duration of the State of Emergency.
- 8.3 Any Resolution adopted under subsections 8.1 or 8.2 shall be made widely available to members and to the public at large by the most effective means of communication available in the circumstances.

## **Section 9.0 Paramountcy**

- 9.1 This Law and any Emergency Order adopted under it shall have paramount application within the Territory over any other Law or Regulation, including those

of Canada or a neighbouring province, (Quebec/Ontario) subject to the terms of any resolution adopted by the Mohawk Council of Akwesasne under subsection 8.2.

- 9.2 The laws of the Provinces of Ontario and Quebec relating to emergency response measures and any Emergency Orders issued under them shall not apply within the Territory unless they are declared to be applicable within the Territory by resolution under section 8.2.
- 9.3 The laws of the southern portion of Akwesasne, namely the Saint Regis Mohawk Tribe and neighboring State of New York relating to emergency response measures and any Emergency Orders issued under them shall not apply within the Territory unless they are declared to be applicable within the Territory by Resolution under section 8.2

## Section 10 Offences

- 10.1 A person is guilty of an offence where that person:
- a) fails to comply with an Emergency Order;
  - b) violates this Law or its Regulation; or
  - c) interferes with or obstructs any person engaged in the implementation of emergency response measures in the exercise of a power or the performance of a duty under this Law or its Regulation.
- 10.2 Any person who assists or who by any means incites, advises, encourages, authorizes, or orders another person to commit an offence under subsection 10.1 is guilty of an offence.
- 10.3 A person is guilty of a separate offence on each day that an offence under subsection 10.1 occurs or continues.
- 10.4 An exemption to an Emergency Order or with this Law or its Regulation may be granted for the following circumstances:
- a) employment; or
  - b) medical; or
  - c) professional services
- 10.5 A person who is convicted of an offence under this Law is liable to one or more of the following:
- a) for each offence a fine of not less than \$250 and not more than \$1,000;
  - b) to surcharges and remedial measures established under its Regulation or Emergency Order; and

- c) to remedial measures under the Akwesasne Tekaia'torehthà:ke Kaianerénhsera (Akwesasne Court Law).
- 10.6 A person convicted under this section may appeal to the appellate division of the Akwesasne Court.

## Section 11 Enforcement

- 11.1 The Akwesasne Mohawk Police Service shall have primary responsibility for the enforcement of this Law, Regulations, and any Emergency Orders issued by Council and shall provide such assistance as may be required to persons implementing Emergency Orders.
- 11.2 Any Enforcement Officer who believes on reasonable grounds that an offence has been committed under section 10 of this Law may issue a ticket to the person accused of the offence to summon them to appear before the Akwesasne Court.
- 11.3 An Enforcement Officer may issue a ticket for an offence under paragraph 10.1 no later than 30 days after the offence date.
- 11.4 The ticket shall provide:
- a) name, date of birth, address of accused person;
  - b) date, time, and location of the offence;
  - c) description of offence, section number, pursuant to the Akwesasne Emergency Management Law;
  - d) date, time, and location on which the accused person must appear before Akwesasne Court;
  - e) no set fine assigned and will be imposed at the Court;
  - f) signature of issuing enforcement officer, of which has reasonable grounds to believe the alleged offence was committed and has served the accused the summons to appear at court.
- 11.5 The accused shall appear before the Akwesasne Court at the appointed date and time, or at such time that may be set by the Court during or after the termination of a State of Emergency, and shall thereafter be dealt with by the Court in accordance with the *Akwesasne Tekaia'torehthà:ke Kaianerénhsera* (Akwesasne Court Law) and applicable Regulations.
- 11.6 The Akwesasne Court shall exercise exclusive jurisdiction over the offences set out in section 10 of this Law.
- 11.7 All applicable procedures, reviews, and appeals under this Law must be exhausted before any application can be made to an external court, tribunal, commission, or other body.

## Section 12 Immunity & Liability

- 12.1 Enforcement Officers, persons appointed to an emergency executive committee, or any other person implementing emergency response measures, shall not be held personally liable for any act done in good faith in the discharge of their duties under this Law. MCA may be liable for the negligence of its officers or any persons appointed.

## Section 13.0 Termination of State of Emergency

- 13.1 The Council shall declare the termination of the State of Emergency by Resolution.
- 13.2 All Emergency Orders will be automatically rescinded by the adoption of a Resolution to terminate the State of Emergency.
- 13.3 Within 30 days of the termination of the State of Emergency, all laws or parts of laws that have been temporarily suspended shall be reinstated or where a law or part of a law was temporarily amended in accordance with section 8.1 that law or part of that law shall revert back to its former wording.
- 13.4 Should a law or parts of a law need to be repealed or amended after the emergency is declared at an end, the process to repeal or amend the law or laws will follow the process spelled out in that law or the Akwesasne Legislative Enactment Procedural Regulation as applicable.
- 13.5 Those legislative enactments which Council maintains in force under subsection 13.3 shall be subject to confirmation under the *Akwesasne Legislative Enactment Procedural Regulation*. For this purpose, the Resolution under subsection 13.3 shall be deemed to be an acceptance in principle under subsection 5.3 of the *Akwesasne Legislative Enactment Procedural Regulation* or its successor.

*Akwesasne Legislative Enactment Procedural Regulations: Reg 2023 s.5.0 (5.3)*

## Section 14.0 Severability

- 14.1 If any part of the Law is for any reason held invalid by a decision of the Akwesasne Court, the invalid section or subsection shall be severed from and not affect the remaining provisions of the Law.

## Section 15.0 Amendment

- 15.1 This Law may be amended under the process set out in the *Akwesasne Legislative Enactment Procedural Regulation* or its successor.

## Section 16.0 Coming into Force

- 16.1 This Law comes into force and effect on the date it is affirmed by resolution of the Mohawk Council of Akwesasne

### **FINAL DRAFT – Akwesasne Emergency Management Law**

- The Working Task Group began Phase I Development of Law in December 2021, inclusive of a legal review and a line-by-line review with Council.
- Council “Accepted in Principle” the Draft Law by MCR 2022/2023 - #173 dated October 3, 2022 completing Phase II and allowing Phase III Community Consultation to begin.
- Phase III Community Consultation began with a summary of the law presented at the November General Meeting.
- Community Consultation Sessions were scheduled and held in each district on January 30, 31<sup>st</sup> and February 2<sup>nd</sup>, 2023.

- Phase III also included a Post Consultation legal review and line by line with Council.
- After completion of Phase III, the Council as per Phase IV Enactment of Law “Accepted in Principle” the Final Draft Law as by MCR 2023/2024 #185 dated July 31, 2023.
- Council also identified by the same MCR 2022/2023 - #185 that a Referendum be held for members to vote on the Final Draft Law, Phase V Ratification/Rejection.

## **REFERENDUM TO BE HELD**

**For the purpose of Phase V Ratification/Rejection of the  
Legislative Enactment Procedural Regulations**

### **FINAL DRAFT LAW – Akwesasne Emergency Management Law**

**To be held on Saturday, October 21, 2023 from 9 a.m. - 5 p.m.  
at the following locations:**

*Tsi Snaihne Recreation*

*Kana:takon Recreation*

*Kawehno:ke Recreation*