

# AKWESASNE MOHAWK COURT

CIA #3

101 TEWESATENI ROAD

AKWESASNE, ONTARIO

# AKWESASNE MOHAWK COURT

- HISTORY & EVOLUTION
- Indian Act –as early as the 1960's through DIAND, MCA began working on writing laws. Commonly referred to as By-Laws
- 1<sup>st</sup> law-Band Administrator followed by: Curfew law (73), Anti Noise #8, (71)Garbage #13 Collection & Disposal (73)
- Hawkers & Peddlers #9 (72), Housing Loan Regulations (72)-passed internally by MCA
- The earlier laws were recognized as Community by-laws.
- Then in the 1980's several laws were submitted to DIAND for approval as By-laws, several were rejected for various reasons.

# AKWESASNE MOHAWK COURT

- Appointment of I.A. JP's began in 1986 under S. 107
- MCA created the Judicial Code of Conduct in '86
- In '87/'88 the general guidelines for the Selection of Mohawk Judges was developed and accepted.
- 1992: JP Cecelia Square was recognized as a Bona Fide JP under the I.A.

# AKWESASNE MOHAWK COURT

- Prior to the early '90's the s. 107 JP's Court sessions were being held in the basement of MCA buildings. Indian Act era
- The Court was set up in the early 1990's
- 94-95 the Court was set up so as to follow procedures contained in any law passed by MCA.
- 94-95, Which included the ability to use the Rules of the Criminal Procedure of Canada & the Ontario Rules of Civil Procedures
- 94-95, Akwesasne Mohawk Court was given jurisdiction over any matters arising from s. 810 of the C.C.C. Sureties to Keep the Peace

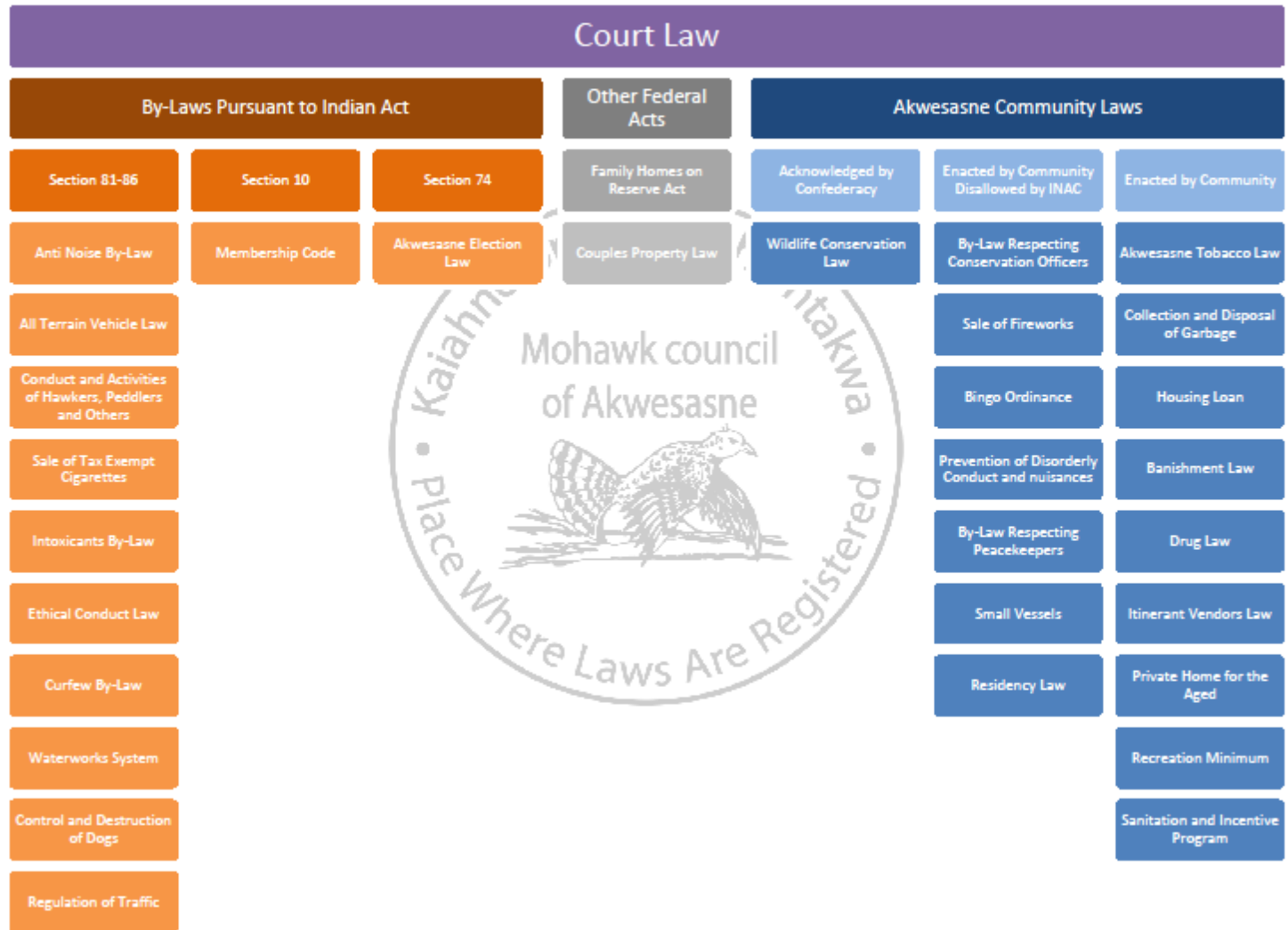
# AKWESASNE MOHAWK COURT

- 95/96 jurisdiction to resolve land issues & disputes within the Territory was given to the Court
- 97/98 Boards and Tribunals began to be established under Mohawk law or codes & passed by MCR.
- Historical moment for Akwesasne '99/'00
- Inherent Rights based Court was implemented by the MCA
- Two community members were appointed, Justice Hall & Francis who still sit today in Akwesasne Court.

# AKWESASNE MOHAWK COURT

- 99/00 Justices were given jurisdiction to determine the validity, interpretation and application of ALL Mohawk laws adopted by Akwesasne
- 01/02 they were given recognition of the authority of a Justice appointed under s. 107 of the I.A.
- MCR 2005/2006-52
- Important to note that contained within the MCR is a clause that will take the necessary measures to guarantee appropriate legislation is completed to mandate the police authorities to enforce ALL applicable laws including civil jurisdiction and equitable remedies as ordered by the Akwesasne Mohawk Court

## Akwesasne Law - Classification



# AKWESASNE MOHAWK COURT

- Cases heard before the Akwesasne Court
- Majority are Traffic offenses under the HTA or QHSC
- Some by-laws: Curfew, intoxicants by-law, ATV, & dog control.
- Elections Appeals dating back to 2002, Ethical Conduct, more recently the Couples Property Referendum, Temporary Injunction Orders, Small Claims, Drug Banishment (06), Residency



# AKWESASNE MOHAWK COURT

- Court S.O.P's were developed around 2003-08, also marriage ceremony procedures, ethical conduct law procedures, peace bond procedures, mediation procedures & forms & fees schedules were all being worked on.
- 2010-2011 the Akwesasne Court law began the development stages.
- ACL was passed on February 23, 2016
- ACL Regulations were passed on May 22, 2018

# AKWESASNE MOHAWK COURT

- **Jurisdiction and legal authority:**
- Offences under Akw, laws within Akw. Lands
- Disputes of matters set out in an Akw. Law can be dealt with by the Court
- Contract disputes
- Matters where parties to a dispute, agree to bring the dispute to the Akw. Court
- The issuance of orders as a remedy prescribed by law
- Granting of equitable or nonmonetary remedies such as injunctions & specific performance orders
- **Enforcement** of negotiated settlements registered with the Court
- **Enforcement** of final ruling by a Decision –making body, where their decision is registered with the Court
- Determination of the validity, interpretation or application of Akw. Laws, except where responsibility is assigned to another body
- Reviews or appeals of Decision-making body
- **Issuance** of subpoenas compelling persons to appear before the Court
- **Issuance** of search warrants to enforce Akw. Laws by an Enforcement Officer, peace officer or AMPS Officer
- **Any other matter where jurisdiction is assigned to the Court under law.**

# AKWESASNE MOHAWK COURT

- Akwesasne Court MAY rely on:
  - Akw laws
  - C.C.C.
  - CCRF
  - The common law
  - Laws of equity and
  - Other applicable laws
- Akwesasne Review Commission (ARC) has a role in the ACL:
  - Authority to receive, hear and dispose of complaints against the Justices or Appeal Justices
  - Appointment of Justices, Prosecutor + Duty Counsel

# AKWESASNE MOHAWK COURT

- Section 9.0 REMEDIES
- Sanctions & Orders by the Justices
- Justices may refer matters to the Neh Kanikonriio Council for recommendations as to remedies.
- Section 9.3 + 9.4 to 9.13 speaks to the remedies & penalties the Justices may make orders covering a large range:
- Examples: prohibiting the continuation or repetition of an offence
- Revoking or suspending any permit or other document issued under Akw. Law
- Requiring treatment through holistic services, including counseling
- ACL allows for Appeals to an Appellate Division

# AKWESASNE MOHAWK COURT

- SECTION 11.0
- ENFORCEMENT & ENFORCEABILITY
- Decisions & Orders are enforceable throughout Akwesasne by an Enforcement Officer
- D & O's maybe enforced off Akw. Lands by police officers, civil officers, courts or other agencies in that jurisdiction
- 11.5 Enforcement Officers have the authority to:
  - Enforce Orders & Warrants
  - Participate in seizure
  - Participate in recovery & sale of property &
  - Perform courtroom & other related duties

# AKWESASNE MOHAWK COURT

- ACL Reg's address some of the following:
- Procedures, forms fees
- Application requirements & commencement of proceedings
- Dispute resolution
- Pre-hearing conferences
- The Hearing
- Orders & Remedies
- Appeals & Reviews from a DMB
- Appeals of an Akw. Court decision
- Appellate Division
- Procedures and Decisions
- Enforcement & Enforceability
- Conflict of Interest

# Akwesasne Mohawk Court

- Restorative Justice Principles: not punitive in nature, community service work hours
- Ticketing: Admin. Monetary Penalties
- Uniform Traffic Tickets being dealt with in the Court are issued under the QHSC or OHTA
- Monetary Penalties:
- Early Resolution: Plea bargaining between the Prosecutor and Duty Council occurs before the court session
- All monetary penalties are paid at the court and go directly into the court budget under revenue generated.
- Convert to CSW Hours:

# Neh Kanikonriio Council

- Since 1999 the Neh Kanikonriio Council has been working with the Ontario Provincial Courts out of Cornwall, Ontario
- They went through the growing pains of educating the Court Judges, Crown Attorneys and Defense lawyers, and other court staff
- They are funded by the Ministry of Attorney General
- Community Members participating in the program 'must' accept responsibility for the offence(s) they have committed.
- The program is quite successful and in the future will also be working closely with the Akwesasne Court as the Akwesasne Court expands.



# Reciprocity

- **Shared Driver Information**
  - United States and Canada may have very different legal systems, but **New York and Canada share driver information with one another.**
  - Some of this information includes who received a traffic ticket, where it was issued, and when the incident happened.
  - Essentially, New York State will transfer notices of conviction to Ontario and Quebec (and vice versa). Once they have this information, they will have the ability to assess demerit points against your driving record.
  - **Quebec Drivers with New York Tickets**
  - According to the Société de l'assurance automobile du Québec (SAAQ), an equivalent offense committed in another province or in an American state that Quebec has a reciprocal agreement with (e.g. New York) will result in demerit points being put on your driving record as if the offense occurred in Quebec itself.
  - **Akwesasne Court: 85-90% of their CASES are TRAFFIC INFRACTIONS**
  - Since 2006 Akwesasne has been trying to get the Province of Ontario to enter into a reciprocity agreement and develop the IT capability to share information on the Akwesasne Courts traffic convictions, it has not happened to date. 12 years for this to happen is way to long
- **Solutions:** Band Council financial investments must occur, if your Band Council is looking to enter into reciprocity agreements with the Province, they have to invest.
  - Now keep in mind that most Band Council Elections occur every two or three years, this has a direct impact on our Justice systems success or failure.
  - Lobbying and negotiating efforts have to remain consistent until the work is completed.
  - Band Council Staff should not be the ones left having to be forced to find the funding to see the Reciprocity come to fruition.

# AKWESASNE MOHAWK COURT

- 2018 – FUTURE
- What does the passing of the ACL + ACLR all mean for now and into the future.
- Section 5 of the ACL has given the Akwesasne Court expanded jurisdiction and authority
- It is recognized as a ‘court of competent jurisdiction’.
- Can hear matters that pertain to:
  - Constitution Act 1982
  - Canadian Charter of Rights & Freedoms
  - Authority to make orders for remedies under section 24 of the CR&F

# Current Akwesasne Hurdles to overcome

- Financial Resources
- Human Resources
- Current Court HR needs:
  - (1) Policy writer/analysis
  - (2) 'new' Justices
- Nation Building vs Political Protocol Agreement: Which will get us to the finish line quicker?
- Nation Building will be inclusive of all 3 governments (Fed. + 2 Provinces) recognizing the Akwesasne Court
- Political Protocol will recognize the need to work closely with the Provinces on the Administrative agreements needed to recognize Akwesasne Court orders, fines, demerits, etc.
- Progress is being made, but it is very slow, especially without the resources needed to complete the processes: Administrative

# Lessons Learned

- We have learned that our Justice System based on customary law with traditional restorative principles being used can work with the three main responsibilities of government: Law-Making; Adjudication and Enforcement.
- The Haudenosaunee have a way of dealing with 'wrongs committed in our society against one another'. They use a restorative justice approach of helping everyone involved accept responsibility for their actions, to heal and make amends with what they have done.

- When you write your law, make sure that your Band Council writes them so that they include the **'authority'** to enforce the law.
- When your Court is being created ensure that it is a **'court of competent jurisdiction'**

- s. 24 of the Charter :
- (a) possesses **jurisdiction** over the parties,
- (b) possesses **jurisdiction** over the subject matter, and
- (c) has **jurisdiction** to grant the remedy requested

# Courts of Competent Jurisdiction

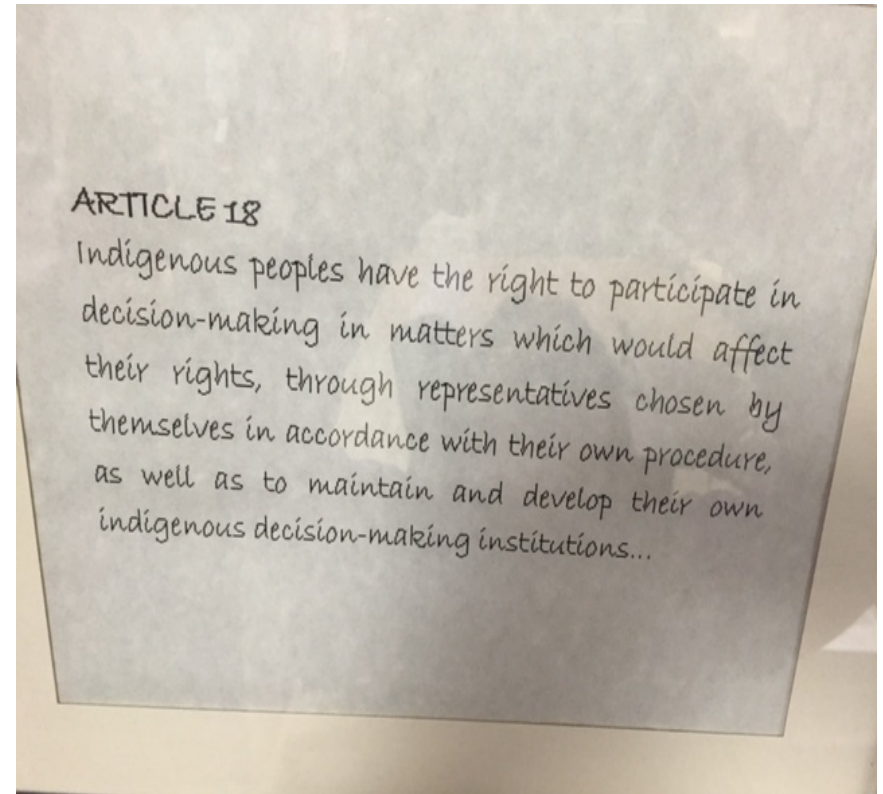
## **Courts of competent jurisdiction**

These section 24(1) remedies may only be dispensed by a "court of competent jurisdiction". In [R. v. Rahey](#) (1987), it was found that in any case, **provincial superior and appellate courts, and courts created by the federal government, will qualify as a court of competent jurisdiction** and may award remedies where it is considered "appropriate and just". An inferior provincial court may qualify as a court of competent jurisdiction where the remedy sought relates to trial procedure.<sup>[4]</sup>

**An administrative tribunal may qualify as a court of competent jurisdiction where it has been granted statutory jurisdiction over the parties,** subject matter, and remedy sought.<sup>[5]</sup> It is important to note that the jurisdiction over "remedy sought" means the jurisdiction as granted by statute, irrespective of the total remedies available under section 24(1) that may be applied by other courts. Even where a tribunal is not found to be a court of competent jurisdiction it is still nonetheless capable of applying the *Charter*.

# 2007 UNDRIP

- Articles: 18, 34, 35 & 40 had a deep influence on the Akwesasne Court. Under these articles Akwesasne expanded the courts jurisdiction in the Court law which was enacted on Feb. 12, 2016 and came into force on August 12, 2016



# 2007 UNDRIP

## ARTICLE 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards...

## ARTICLE 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities...

## ARTICLE 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights...



# ACPL enacted Dec. 7, 2013

## Coming into Force: Nov. 26, 2015

### **Section 6 Mediation Process**

- Mandatory first step
- Mediation shall take place through the Court administration which take into account the culture, traditions and customs of the Mohawks of Akwesasne
- Parties may bring independent legal counsel

### **Section 9 Orders for Possession of the home**

- 9.10 'ex parte' application-emergency Order for exclusive occupation –period of up to 90 days, .....if the Court concludes:
  - A) family violence has occurred;
  - Immediate danger to the applicant or Child; and
  - The Order is required without delay because of the urgency or seriousness of the situation to ensure immediate protection of the applicant or a Child who resides in the home

# Current Case

- Common-law spouse female paid the \$100 **application fee on Mar 21, 2018** to Akw. Court, there are 3 minor children involved, and long term domestic abuse involved in this particular case. On-going case since Mar. 2018
- **'ex parte' application-emergency Order issued Mar. 23, 2018 expires 90 days**
- May 18, 2018 family court Valleyfield Quebec
- Spouse is facing multiple charges in Valleyfield, Quebec, awaiting sentencing
- Due to external legal issues before the outside court on the defendant, the case is now on the 3<sup>rd</sup> Court order of 90 days: original 90 days (expires 90 days from Mar 23, 2018), 2<sup>nd</sup> issued July 27, 2018 expires Oct. 31, 2018 extension of 90 days, 3<sup>rd</sup> order issued on **15<sup>th</sup> of November 2018 , 90 days extension was granted to expire on 01/31/19.**
- **3<sup>rd</sup> order allowed for the defendant to return to the home under police/compliance escort to retrieve his winter clothing, Nov. 19<sup>th</sup> @ 1:00 pm – no incidents.**
- Akwesasne Court has ordered the defendant to seek a change to his conditions of release to the Quebec Court due to the mandatory mediation to occur. He has a no contact with the victim in his Provincial court order.
- TEST: The 3<sup>rd</sup> 90 day extension order lists what the parties are to do, to continue with the ACPL, so that they can try to move forward in our court.
- The test on our court is, will the parties abide by our Akwesasne court order on what they need to get done for the mediation as our Court set a date to complete mediation of January 31, 2019.
- Since there is much domestic violence involved we have the police and compliance in the court as security.

AKWESASNE MOHAWK COURT

QUESTIONS