



Iatathróna Raotiientáhtsera 'Couples Property' Law

Kaiahnehronshera iehiontakwa Number: 2015-31

Mohawk Council Resolution: 2013/2014-#279
Date Enacted: December 7, 2013

Mohawk Council Resolution: 2015/2016-#038
Date Reaffirmed: May 26, 2015


Coming into Force: November 26, 2015

AKWESASNE MOHAWK COUNCIL RESOLUTION

File Reference:

MCR #: 2015/2016-#038



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		RECORDED VOTE	<input checked="" type="checkbox"/> Carried <input type="checkbox"/> Denied
PLACE	Administration Building I		For: 9	
DATE	26	May 2015	Against: 0	
	Day	Month	Year	Abstention:

DO HEREBY RESOLVE:

Moved: Florence Phillips

Seconded: Joe Lazore

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 the 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, Bill S-2, an Act Respecting Family Homes Situated on First Nations Reserves reached Royal Assent on June 19, 2013;

AND WHEREAS, the Mohawk Council of Akwesasne recognizes the need to address the issue of Matrimonial Real Property and its application on the territory;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2013/2014-#279 on December 16, 2013 accepting the enactment of the Iatathróna Raotientáhtsera 'Couples Property' Law;

AND WHEREAS, the Akwesasne Justice Department was tasked to develop a second Special Referendum to reaffirm the Iatathróna Raotientáhtsera 'Couples Property' Law in order to stop provincial jurisdiction from taking effect on the territory by making every effort to meet the Federal threshold outlined in Bill S-2;

AND WHEREAS, the second Special Referendum was completed on March 31, 2015 and the Chief Referendum Officer, in accordance with section 13.3 of the Special Referendum Regulation, submitted to the Executive Director the statement of unofficial results of the referendum;

AND WHEREAS, the appeal period outlined in section 15.1 of the Special Referendum Regulation has expired and one appeal to the result of the Referendum was filed;

AND WHEREAS, a hearing was convened on May 20, 2015, where the Appellant withdrew the Appeal;


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AKWESASNE MOHAWK COUNCIL RESOLUTION

File Reference: _____

MCR #: 2015/2016-#038



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	RECORDED VOTE	
PLACE	Administration Building I	For: 9	<input checked="" type="checkbox"/> Carried
DATE	26 May 2015 Day Month Year	Against: 0	<input type="checkbox"/> Denied
		Abstention: _____	

DO HEREBY RESOLVE:

Moved: Florence Phillips

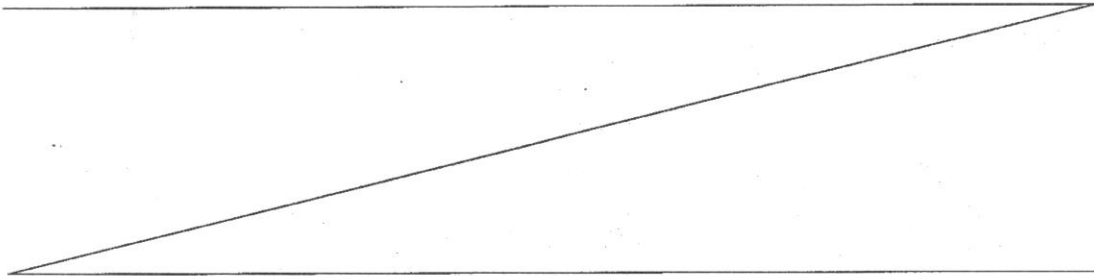
Seconded: Joe Lazore

-2-

THEREFORE BE IT RESOLVED, THAT the Mohawk Council of Akwesasne acknowledges the Akwesasne Mohawk Court's decision and order of May 22, 2015 of the results of the Iatathrona Raotiientahrtsera 'Couples Property' Law Special Referendum that concluded on March 31, 2015;

FURTHER BE IT RESOLVED, THAT the Mohawk Council of Akwesasne acknowledges the Chief Referendum Officers statement of official results as the final results of the Iatathrona Raotiientahrtsera 'Couples Property' Law referendum;

FINALLY BE IT RESOLVED, THAT the attached Iatathrona Raotiientahrtsera 'Couples Property' Law is hereby reaffirmed and shall come into effect six (6) months after the date of this Resolution.



carried

Amil Adams Phillips
Chief ☒ Yes ☐ No ☐ Ab

Louise Johnson
Chief ☒ Yes ☐ No ☐ Ab

H. Jacobs
Chief ☒ Yes ☐ No ☐ Ab

Florence Phillips
Chief ☒ Yes ☐ No ☐ Ab

Joe Lazore
Chief ☒ Yes ☐ No ☐ Ab

Amil Adams Phillips
Chief ☐ Yes ☐ No ☐ Ab

Joe Lazore
Chief ☐ Yes ☐ No ☐ Ab


Karen Jean
Chief ☐ Yes ☐ No ☐ Ab

AKWESASNE MOHAWK COUNCIL RESOLUTION

File Reference:

MCR #: 2013/2014-#279



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		RECORDED VOTE	
PLACE	Administration Building 1		For: 7	<input checked="" type="checkbox"/> Carried
DATE	16	December	Against: 0	<input type="checkbox"/> Denied
	Day	Month	Year	
		2013	Abstention: 0	

DO HEREBY RESOLVE:

Moved: Julie Phillips - Jacobs
Seconded: Florence Phillips

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 the 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, Bill S-2, an Act Respecting Family Homes Situated on First Nations Reserves reached Royal Assent on June 19, 2013;

AND WHEREAS, the Mohawk Council of Akwesasne recognizes the need to address the issue of Matrimonial Real Property and its application on the territory;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2013/2014-#144 on July 31, 2013 accepting the proposed Iatathróna Raotientáhtsera 'Couples Property' Law in principle for Phase IV – Enactment of an Akwesasne Law;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2013/2014-#203 on October 8, 2013 accepting the Iatathróna Raotientáhtsera 'Couples Property' Law Special Referendum Regulation;

AND WHEREAS, the Mohawk Council of Akwesasne ratified Resolution 2013/2014-#221 accepting the ballot question, "Do you approve of the Iatathróna Raotientáhtsera 'Couples Property' Law?", to be presented to the Members of the Mohawks of Akwesasne in accordance with the prescribed Regulation;

AND WHEREAS, a Special Referendum was completed on December 7, 2013 and the Chief Referendum Officer, in accordance with section 15.2 of the Special Referendum Regulation, submitted to Council the statement of results of the referendum;


AND WHEREAS, the appeal period outlined in section 17.1 of the Special Referendum Regulation has expired and no appeal to the result of the Referendum were filed;

AKWESASNE MOHAWK COUNCIL RESOLUTION

File Reference:

MCR #: 2013/2014-#279



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	RECORDED VOTE	
PLACE	Administration Building 1	For: 7	<input checked="" type="checkbox"/> Carried
DATE	16 December 2013	Against: 0	<input type="checkbox"/> Denied
		Abstention: 0	

DO HEREBY RESOLVE:

Moved: Julie Phillips-Jacobs

Seconded: Florence Phillips

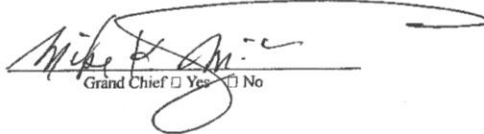
-2-

THEREFORE BE IT RESOLVED, THAT the Mohawk Council of Akwesasne acknowledges the Chief Referendum Officers' statement of results of the Iatathrona Raotientáhtsersa 'Couples Property' Law Special Referendum as the final results;

FURTHER BE IT RESOLVED, THAT the attached Iatathrona Raotientáhtsersa 'Couples Property' Law is hereby enacted and shall come into effect six (6) months after the date of this Resolution;

FINALLY BE IT RESOLVED, THAT the Iatathrona Raotientáhtsersa 'Couples Property' Law shall be forwarded to the Kaiahnehronshera iehiontakwa to be registered as an Akwesasne Community Law.

CANCELLED


Grand Chief ☐ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☒ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab

Chief ☒ Yes ☐ No ☐ Ab

Chief ☒ Yes ☐ No ☐ Ab

Chief ☐ Yes ☐ No ☐ Ab



Affaires autochtones et
Développement du Nord Canada

Sous-ministre

Ottawa, Canada
K1A 0H4

Aboriginal Affairs and
Northern Development Canada

Deputy Minister

01 SEP. 2015

Grand Chief ~~Michael Kanentakeron Mitchell~~
Mohawk Council of Akwesasne
PO Box 579
CORNWALL ON K6H 5T3

Dear Grand Chief ~~Mitchell~~:

Thank you for your April 16, 2015 letter, addressed to the Honourable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development, advising that the *latathrona Raotiientahtsera* 'Couples Property' Law by the Mohawks of Akwesasne was approved in accordance with the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (the Act).

As required under section 11(6) of the Act, the name of your First Nation will be posted on the Department's website as having a community-specific matrimonial real property law in force under the legislation.

We look forward to continuing to work collaboratively with you to improve the quality of life for Aboriginal peoples.

Sincerely,

Colleen Swords

Canada

Attorney General
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720 Bay Street
11th Floor
Toronto ON M7A 2S9
Tel: 416-326-4000
Fax: 416-326-4016

Procureure générale
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Téléc.: 416-326-4016



Our Reference #: MC-2015-2652
MC-2015-2090

July 8, 2015

Grand Chief ~~Michael~~ Kanentakeron ~~Mitchell~~
Mohawks of Akwesasne
PO Box 579
Cornwall, ON
K6H 5T3

Dear Grand Chief ~~Mitchell~~:

Thank you for your recent letters regarding the Mohawk Council of Akwesasne's referendum on its matrimonial real property law.

I appreciate that you have written to update me on the Mohawks of Akwesasne's recent efforts in the development of its matrimonial real property law in accordance with the federal *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

As this issue also relates to the mandate of the federal Minister of Justice and Attorney General, the Honourable Peter MacKay, and the federal Minister of Aboriginal Affairs and Northern Development, the Honourable Bernard Valcourt, I have copied them on this correspondence, for their information.

Thank you again for your letter.

Sincerely,

A blue ink signature of Madeleine Meilleur, written in a cursive style.

Madeleine Meilleur
Attorney General

c: The Honourable Peter MacKay, Minister of Justice and Attorney General
The Honourable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development




Québec, le 2 juillet 2015

Monsieur Michael Mitchell
Grand Chef
Conseil des Mohawks d'Akwesasne
Case postale 579
Cornwall (Ontario) K6H 5T3

Monsieur le Grand Chef,

Au nom de la ministre de la Justice, madame Stéphanie Vallée, permettez-moi d'accuser réception de votre correspondance, datée du 16 avril 2015, par laquelle vous nous transmettiez la copie de vos textes législatifs approuvés conformément à l'article 10 de la *Loi sur les foyers familiaux situés dans les réserves et les droits ou intérêts matrimoniaux*.

Je vous prie d'agréer, Monsieur le Grand Chef, l'expression de mes sentiments les meilleurs.



M^e Renée Madore
Sous-ministre associée

TRANSLATION

Quebec, July 2, 2015

Mr. ~~Michael~~ Mitchell
Grand Chief
Mohawk Council of Akwesasne
Post Office Box 579
Cornwall (Ontario) K6H 5T3

Dear Grand Chief,

On behalf of the Minister of Justice, Mrs. Stéphanie Vallée, let me acknowledge receipt of your correspondence, dated April 16, 2015, by which you sent us the copy of your approved laws, according to section 10 of the *Family Homes on Reserves and Matrimonial Interests or Rights Act*.

Yours sincerely,

Mtre Renée Madore
Associate Deputy Minister

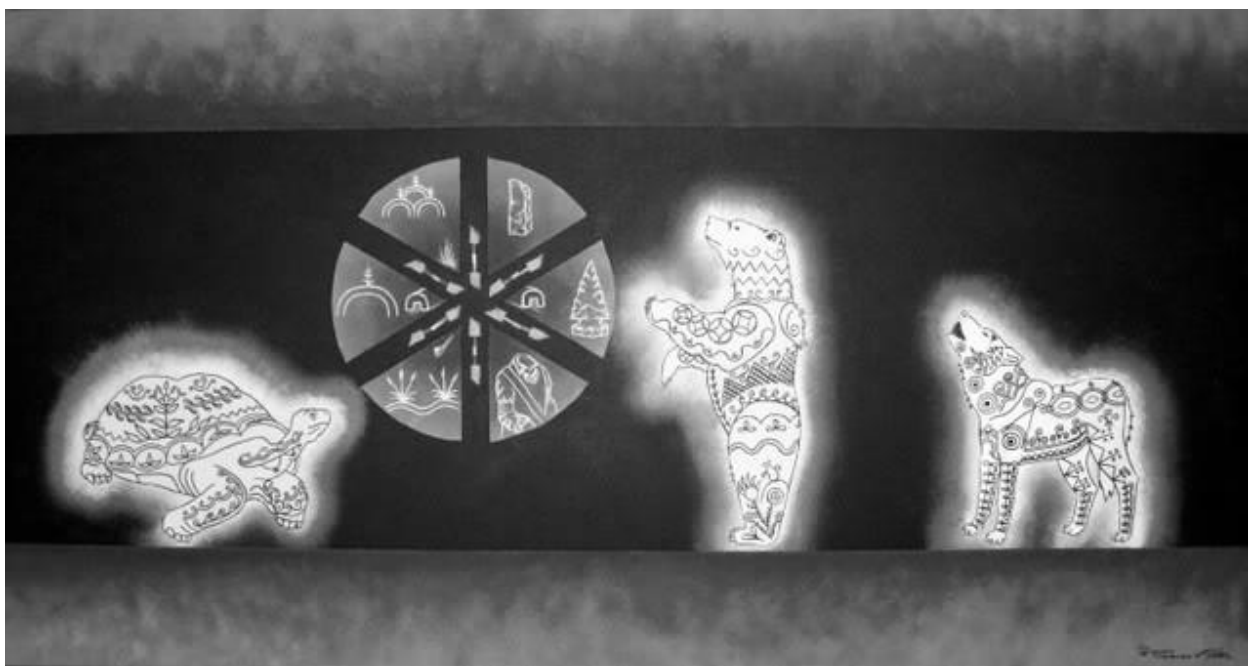
Iatathróna Raotiientáhtsera

‘Couples Property’ Law

APPROVED BY MCR 2013/2014-#279

REAFFIRMED BY MCR 2015/2016-#038

Mohawk Council of Akwesasne



Iatathróna Raotiientáhtsera

‘Couples Property’ Law

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PREAMBLE

***WHEREAS**, the Mohawks of Akwesasne have Aboriginal and treaty rights, and other rights and freedoms that are recognized and affirmed in the Constitution Act, 1982, which include the inherent right of self-government and Jurisdiction over their lands, peoples and resources;*

***AND WHEREAS**, as part of their Aboriginal right of self-government, the Mohawks of Akwesasne have the right to govern themselves in relation to matters that are integral to their unique cultures, identities, traditions, languages and institutions and with respect to their special connection to their people, children, land and their resources;*

***AND WHEREAS**, the Mohawks of Akwesasne intend to preserve the cultural, political and economic integrity of the Mohawk territory and community of Akwesasne;*

***AND WHEREAS**, the Mohawks of Akwesasne are a people with a distinctive language, powerful spirituality, and diverse culture which pre-existed the establishment of Canada and continues to exist;*

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

***AND WHEREAS**, the Mohawks of Akwesasne have an Aboriginal right to establish and maintain their own processes to resolve disputes that arise regarding the division and distribution of matrimonial property of our members that reside within our territory;*

***AND WHEREAS**, the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly of the United Nations in September 2007, contains several provisions that supports the rights of indigenous peoples to self-determination and are relevant to the question of Jurisdiction over Matrimonial Property issues;*

***AND WHEREAS**, the use of land is of significant importance to Onkwehon:we, our children's development and the enjoyment of our culture.*

***THEREFORE BE IT RESOLVED THAT**, the Mohawk Council of Akwesasne enacts this *Iatathróna Raotiientáhtsera* ('Couples Property' Law) to protect the interests of our families, children, and community when there is a marriage breakdown.*

Section 1.0 Title of the Law

This Law shall be referred to as the “Iatathróna Raotiientáhtsera” Law.

Section 2.0 Definitions

In this Law:

“Akwasasne Lands” means the lands, resources and waters over which the Mohawk Council of Akwasasne has Jurisdiction over, 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) Enskatsikahwenote (St. Regis Island) and any island within Quebec;
- e) Any future additions to Akwasasne Lands; and
- f) Any submerged lands, islands, rivers, marshes, waterways, riverbeds, and weed beds in, under and adjacent to Akwasasne Lands that are part of Akwasasne by operation of law;

“Akwasasne Law” means a law or code enacted by the Mohawks of Akwasasne;

“Akwasasne Law Enactment Procedural Regulation” means the Regulation establishing the procedure for enactment and coming into force of Akwasasne Laws;

“Akwasasne Mohawk Court” means the court established under Akwasasne Law or in absence of an Akwasasne Mohawk Court Law, by Council Resolution exercising Jurisdiction within Akwasasne Lands;

“Akwasasne Mohawk Court Justice” means a Justice of the Akwasasne Mohawk Court;

“Akwasasne Mohawk Police Officer” means a duly sworn officer of the Akwasasne Mohawk Police Service;

“Child” means a child who is a Member under the *Akwasasne Membership Code* and is either a person’s natural child, adopted child or child whom the person has demonstrated a settled intention to treat as a child of his or her family who is under the age of 18 years and includes such a person who is:

- a) over 18 years of age but under the age of 21 years and is enrolled in, and attending, a post-secondary educational institution; or
- b) over the age of 18, but as a result of mental or physical disability, is unable to care for him/herself and is dependent on someone else for support;

“Common-Law Relationship” means the situation where two people have lived together in a marriage-like relationship for:

- a) one (1) year when there is a Child of the union; or
- b) at least five (5) years if there is no Child of the union involved;

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

“Court” means the Akwesasne Mohawk Court;

“Custom” means the cultural or traditional practices the Mohawks maintain and practice today;

“Domestic Agreement” means a written agreement, which may be a separate agreement or part of an agreement dealing with the rights and obligations of the parties, signed by the parties and witnessed by an adult, and which includes:

- a) a “spousal agreement” entered into between Spouses, or between two people in contemplation of their Marriage to each other, in which they agree on their respective rights and obligations while residing together as Spouses or on separation, with respect to the possession or division of an interest in the Akwesasne Lands; or
- b) a “separation agreement” entered into between Spouses who are living separate and apart, in which they agree on their respective rights and obligations under the Marriage or on separation, with respect to the possession or division of an interest in the Akwesasne Lands;

“Enforcement Officer” means a person authorized by Council to enforce Akwesasne Laws, and for greater certainty does not include Akwesasne Mohawk Police Officers;

“Iatathróna Raotiientáhtsera” means ‘Couples Property’ Law applying to both Married and Common-Law Relationship couples;

“Interest” means any legal estate, right or interest of any nature held by a Spouse or Spouses in or to Akwesasne Lands but does not include title to the land;

“Iroquois Dispute Resolution Tribunal” means a travelling Iroquois Tribunal comprised of representatives from Six Nations, Kahnawake, and Akwesasne to develop and implement adjudicative process which will accompany each respective community’s law;

“Jurisdiction” means having authority to make and enforce laws within the territory of Akwesasne;

“Lands Register” means the registry administered by the Akwesasne Office of Vital Statistics under applicable law, for the registration of Interests in Akwesasne Lands;

“Lease” means a non-assignable Interest in the Matrimonial Home and Matrimonial Property giving a Spouse the exclusive right of use and possession of the lands for a fixed period of time on specified terms and conditions;

“Life Interest” means the right of a Spouse who is a Member or Child to occupy the Matrimonial Home for the rest of their life;

“Marriage” or “Married” means the union of two persons that is formalized by religious or civil ceremony recognized under the laws of other governments or recognized under Custom, and includes a Common-Law Relationship;

“Matrimonial Home” means a dwelling where both Spouses habitually resided, on the date of separation, whether it was acquired before or after the date of the Marriage;

“Matrimonial Property” means any Interest in Akwesasne Lands acquired by one or both of the Spouses during the Marriage;

“Mediation” means a process whereby a neutral third party facilitates communication among parties to a dispute, to assist them in reaching a mutually acceptable resolution;

“Mediator” means a neutral third party trained to conduct and facilitate mediation;

“Member” means a person enrolled on the Akwesasne Membership Roll under the Akwesasne Membership Code;

“Membership Roll” means a list of enrolled members of the Mohawks of Akwesasne maintained by the Akwesasne Office of Vital Statistics;

“Order” means an Order made by the Akwesasne Mohawk Court;

“Personal Property” means anything other than land or an Interest in Akwesasne Lands that is capable of ownership and includes but is not limited to such items as furniture, vehicles, boats, livestock, household goods, clothing, jewelry, money, bank accounts, shares, wages or debts owed to an individual;

“Resident” or “Residency” means a person who has the legal right or privilege to live permanently, temporarily or occasionally on Akwesasne Lands in accordance with this Law or Residency Law;

“Residency Law” means the law regarding residency on Akwesasne Lands duly enacted by the Mohawks of Akwesasne;

“Resolution” means a Mohawk Council Resolution (MCR) formally adopted by the Mohawk Council of Akwesasne pursuant to its governing authority; and

“Spouse” means a person who is Married to, or in a Common-law Relationship with, a Member.

Section 3.0 Interpretation

3.1 In this Law:

- a) headings and sub-headings are for convenience only and do not form part of this Law, and in no way define, limit, alter, or enlarge the scope or meaning of any provision;
- b) words in singular include the plural, and words in the plural include the singular;
- c) unless otherwise clear from the context, whenever the masculine is used, it will include the feminine and the use of the feminine includes the masculine;
- d) the expression “must” is to be understood as compulsory and the expression “may” is to be understood as permissive;
- e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”;
- f) a reference to an Akwesasne Law, Code, Charter or Regulation includes any amendment or replacement of that Law, Code, Charter or Regulation; and
- g) a reference to the Akwesasne Mohawk Court, and Akwesasne board, commission or tribunal in this Law includes any successor body established by Akwesasne Law or Resolution carrying out all or some of the functions of the board, commission or tribunal.

3.2 For greater certainty, the definitions of Spouse and references to Marriage in this include:

- a) in the case of a person asserting a right under this Law, a void or voidable marriage(s) entered into by that person in good faith;
- b) relationships entered into before this Law takes effect; and
- c) former Spouses:
 - i. for the purpose of enforcing rights or obligations under a Order or Domestic Agreement as defined in this Law; or
 - ii. for asserting rights or obligations under this Law, so long as an application by a former Spouse is commenced within one year of the date of separation.

Section 4.0 Principles

4.1 Purpose and Application

The purpose of this Law, on a marital breakdown, is to:

- a) establish rules and a mechanism for the determination of the division of Matrimonial Property;
- b) determine possession of the Matrimonial Home; and
- c) ensure that the paramount consideration, when determining possession of the Matrimonial Home, is that the Child is not separated from the Matrimonial Home.

4.2 Jurisdiction

In enactment of this Law, Council is exercising its Jurisdiction with respect to determination of the division, possession and distribution of Matrimonial Property, including the right to Life Interest of the Matrimonial Home, on Akwesasne Lands on Marriage breakdown.

4.3 For greater certainty:

- a) a Spouse cannot commence an action after the death of the other Spouse to claim, take or pursue an Interest in Akwesasne Lands held by the other Spouse under this Law, and his or her Interest will be determined by the applicable law governing the estate of the deceased Spouse;
- b) in the event of a Marriage breakdown, a Spouse may apply for relief under this Law to:
 - i. enforce a Domestic Agreement;
 - ii. determine a dispute in relation to Matrimonial Property;
 - iii. seek an Order for Life Interest of the Matrimonial Home; and
 - iv. deal with any other matter provided for under this Law;
- c) the Interest of a Spouse, including any right of possession of the Matrimonial Home or other Matrimonial Property or to a right for division, or other Order in relation to Matrimonial Property, shall be determined in accordance with this Law; and
- d) this Law applies in respect of Interests in Akwesasne Lands, whether or not they were acquired before or after this Law takes effect.

4.4 Aboriginal Treaty Rights

Nothing in this Law will be construed so as to abrogate or derogate from the aboriginal and treaty rights of the Aboriginal Peoples recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.

4.5 No Discrimination

Nothing in this Law shall be interpreted or administered to discriminate on the basis of sex, but may distinguish between Members and non-Members to determine the interest that may be held in the Akwesasne Lands or rights they have under this Law.

Section 5.0 Application

5.1 This Law applies to:

- a) Members;
- b) a Child; and
- c) non-Members who are the Spouse of a Member.

5.2 For greater certainty, this Law:

- a) will not deal with Spousal or Child support, Child custody, Membership or Personal Property;
- b) applies only to Interests in Akwesasne Lands;
- c) considers the rights of a Spouse to Matrimonial Property;
- d) addresses rights to possession of the Matrimonial Home; and
- e) does not include as Matrimonial Property the rights or Interests in Akwesasne Lands held collectively by the Mohawks of Akwesasne.

5.3 This Law does not apply to two non-member Spouses who hold an Interest in Akwesasne Lands.

Section 6.0 Mediation Process

6.1 Mediation will serve as the mandatory first step towards resolving an issue involving the division, possession or distribution of Matrimonial Property and is the first step prior to bringing the matter to the Court.

6.2 Mediation shall take place through the Court administration procedures which takes into account the culture, traditions, and Customs of the Mohawks of Akwesasne.

6.3 The parties may bring independent legal counsel to a mediated agreement and, once signed, the agreement may be recognized by the Court or an outside court.

Section 7.0 Domestic Agreements

7.1 Spouses have the right to enter into Domestic Agreements which may set forth their rights and obligations during Marriage.

7.2 Domestic Agreements are enforceable except with respect to the possession of the Matrimonial Home where there is a Child involved. Possession of the Matrimonial Home where there is a Child involved shall be determined in accordance with this Law.

- 7.3** Notwithstanding sections 7.1, a provision in a Domestic Agreement that would give, award or acknowledge an allotment Interest in Akwesasne Lands, in favor of a Spouse who is not a Member or a Child who is not a Member, is void.
- 7.4** Subject to this Law, the Court may, on application under section 10, set aside a provision of a Domestic Agreement with respect to an Interest in Akwesasne Lands:
- a) if a party failed to disclose to the other all of that party's Interests in Akwesasne Lands, or any material information in respect of those Interests;
 - b) if a party did not understand the nature or consequences of the provision; or
 - c) if a party has signed under duress that would make the contract invalid under law.
- 7.5** This section applies whether the parties entered into a Domestic Agreement on, before or after the date that this Law comes into force and effect.
- 7.6** A provision of a Domestic Agreement that is void or voidable is severable from the other provisions of the Domestic Agreement.

Section 8.0 Applications to Akwesasne Mohawk Court

- 8.1** Until such time as an Iroquois Dispute Resolution Tribunal is established, all matters under this Law will be dealt with by the Akwesasne Mohawk Court.
- 8.2** In the event of the breakdown of the Marriage, a Spouse or former Spouse may apply to Court to determine a dispute in relation to an Interest in Akwesasne Lands provided that the Spouse has first complied with section 6.1 to 6.3 or has been specifically relieved of such compliance under section 8.6.
- 8.3** An application under this Law may be made at any time prior to a final divorce decree or within one (1) year of a final divorce decree.
- 8.4** An application for the possession of the Matrimonial Home may be brought on by:
- a) a Spouse or former Spouse; or
 - b) a grandparent, family member, or extended relative, who plays a primary role in the Child's up-bringing and acts as representative of the Child's best interests.
- 8.5** The Court shall not take or exercise Jurisdiction under this section without first inquiring whether or not the applicant has pursued and participated in Mediation pursuant to section 6.
- 8.6** If there has been no Mediation, the Court may:
- a) direct that there be Mediation pursuant to the rules of the Court or under section 6.1 to 6.3; or

- b) where a requirement for Mediation may result in an injustice, proceed to deal with an application under this section.

Section 9.0 Orders for Possession of the Matrimonial Home

- 9.1** Subject to this Law, both Spouses have an equal right to possession of the Matrimonial Home.
- 9.2** Notwithstanding section 10.2 and subject to section 9.9 a person who is not a Member and not otherwise entitled to seek possession of the Matrimonial Home, may acquire an exclusive right of possession of the Matrimonial Home under this Law to raise their Child or a Lease in a Court Order, and shall be deemed during this period to have a residency permit or other form of permission to reside on Akwesasne lands under the *Akwesasne Residency Law*.
- 9.3** When only one Spouse holds an Interest that is a Matrimonial Home, the other Spouse's right of possession:
 - a) is personal against the Spouse who holds the Interest; and
 - b) unless a Domestic Agreement or Order provides otherwise, ends when the parties cease to be Spouses.
- 9.4** The Court may make an Order for possession of the Matrimonial Home, including an Order of a Life Interest to a Member Spouse or a Lease to any Spouse for a term of years subject to such terms and conditions as the Court deems just in all the circumstances.
- 9.5** Subject to sections 9.2, 9.6 and 10.2 the Court in hearing an application under section 9.4 shall consider:
 - a) any existing Orders under this Law and any existing support Orders;
 - b) the financial position of both Spouses;
 - c) any Domestic Agreement between the Spouses;
 - d) the duration of Spousal residence in the Matrimonial Home;
 - e) the availability of other suitable and affordable accommodation;
 - f) any violence committed by a Spouse against the other Spouse or a Child of the Marriage; and
 - g) any other relevant factors.
- 9.6** The most important factor in determining exclusive possession of the Matrimonial Home where there is a Child shall be which parent has custody of the Child, the possible disruptive effects on the Child of a move to other accommodation, and the Child's views and preferences, if they can reasonably be ascertained.
- 9.7** Any Order made under section 9.4 where a Child will live in the Matrimonial Home shall allow for a period of time sufficient to ensure that the Child, or the youngest Child if

there is more than one such Child, reaches the age of majority and has the opportunity to complete their education, provided that observance of this principle is consistent with the best interests of the Child.

- 9.8** Where both Spouses share joint custody of a Child, the principles set out in this section shall be adapted to favour the Spouse with whom the Child principally reside, but if the Child reside substantially equal periods of time with both Spouses, then the principle shall be neutral as between the Spouses.
- 9.9** The right of possession of a Matrimonial Home by a custodial Spouse under this Law is not assignable and unless the Order includes a Life Interest or Lease, shall be deemed to terminate when the eligible Child is no longer is a Child within the meaning of that term in this Law or the Child no longer resides in the Matrimonial Home.
- 9.10** The Court may, on *ex parte* application by a Spouse, a grandparent, a family member, or extended relative, who plays a primary role in the Child's up-bringing and acts as representative of the Child's best interests, make an emergency Order for exclusive occupation of the Matrimonial Home in favour of that Spouse, grandparent, family member or extended relative, for a period of up to 90 days, whether or not the applicant is a Member and whether or not a Child is involved, if the Court concludes that:
- a) family violence has occurred;
 - b) there is an immediate danger to the applicant or Child; and
 - c) the Order is required without delay because of the urgency or seriousness of the situation to ensure the immediate protection of the applicant or a Child who resides in the Matrimonial Home.
- 9.11** An Order under sections 9.4 or 9.10 may include any or all of the following:
- a) a provision requiring a person to vacate the Matrimonial Home and prohibiting them from returning to the Matrimonial Home or approaching within a prescribed distance of the Matrimonial Home for the duration of the Order;
 - b) a provision directing an Akwesasne Mohawk Police Officer or other peace officer to remove any person named in the Order from the Matrimonial Home or from any area within the distance of the Matrimonial Home prescribed in the Order;
 - c) a provision directing an Enforcement Officer to escort the person who is required to vacate back to the Matrimonial Home to supervise the removal of personal belongings; and
 - d) any other provision that the Court considers necessary for the immediate protection of any person who is at risk.
- 9.12** A copy of an Order made under sections 9.4 or 9.10 shall be served by an Enforcement Officer on the party against whom the Order is made.
- 9.13** Any person against whom an Order is made under sections 9.4 or 9.10 is bound by the Order on receiving notice of it.

- 9.14** Any person in whose favour or against whom an Order is made under sections 9.4 or 9.10 or any person specified in the Order or the holder of an Interest or right in or to the Matrimonial Home may apply to the Court to have the Order varied or revoked if there has been a material change in circumstances.

Section 10.0 Orders Concerning Matrimonial Property

- 10.1** In addition to any Order for possession of the Matrimonial Home made under section 9.4 the Court may, subject to this section and sections 10.2 to 10.8, make any Order in relation to an Interest in Akwesasne Lands held by a Spouse, or by both Spouses, including one or more of the following Orders:

- a) a declaration as to the ownership or right of possession of other Matrimonial Property;
- b) an Order that an Interest in Akwesasne Lands be transferred to a Spouse absolutely, where permitted under applicable law;
- c) an Order that an Interest in Akwesasne Lands be subject to a Lease by one Spouse to the other Spouse for a term of years, or be subject to a Life Interest in favour of a Spouse, on such terms and conditions as the Court deems just in all the circumstances;
- d) an Order a Spouse to pay compensation to the other Spouse if the Interest in Akwesasne Lands has been disposed of, or for the purpose of adjusting the division of Matrimonial Property;
- e) an Order that the share of either or both Spouses in the Matrimonial Property be transferred to, or be placed in trust for a Child;
- f) an Order that an Interest in Akwesasne Lands held by both Spouses be partitioned or sold and if sold, payment made to either or both Spouses in specified proportions or amounts;
- g) any appropriate and equitable Order where a Spouse has intentionally, recklessly or fraudulently depleted Matrimonial Property that is an Interest in Akwesasne Lands;
- h) any Order as it deems appropriate based on the individual circumstances of the case before it;
- i) an Order for payment by one Spouse of any outstanding MCA housing loans incurred against the Matrimonial Home.

- 10.2** Subject to section 9.2 a person who is not a Member:

- a) may not be allocated a Certificate of Possession under the *Indian Act*, on Akwesasne Lands;
- b) does not have the right to acquire, inherit, own or transfer Matrimonial Property under this Law; and

- c) does not have the right to possess, use or occupy an interest in a Matrimonial Home or other Matrimonial Property except pursuant to an Order made under sections 9.4 or 10.1(c).

10.3 Subject to section 7.1 to 7.6, a Domestic Agreement determining ownership of the Matrimonial Property on a Marriage breakdown shall be enforced by the Court.

10.4 In the event that the parties do not have a Domestic Agreement determining ownership of the Matrimonial Property on a Marriage breakdown or cannot agree on the value of Matrimonial Property, then in Order to ensure fairness, the parties must have the Matrimonial Property independently assessed in Order to determine its net value.

10.5 Subject to sections 10.6 and 10.7, there shall be an equal division of Matrimonial Property between the Spouses and the value of the assessment made under section 10.4 shall be used by the Court to determine the value of the Matrimonial Property.

10.6 Exception

The principle of equal division of Matrimonial Property in section 10.5 may be varied by the Court by considering the following factors:

- a) the extent to which the Matrimonial Property was acquired by one Spouse through inheritance or gift;
- b) the date when the Matrimonial Property was acquired or disposed of;
- c) the duration of the Spousal relationship;
- d) the duration of the period during which the Spouses have lived separate and apart;
- e) the needs of each Spouse to become or remain economically independent;
- f) direct financial contributions of each of the Spouses to the acquisition or improvement of the Matrimonial Property;
- g) the contribution of a Spouse, who does not hold the registered interest in Akwesasne Lands of the Matrimonial Property, directly or indirectly to the acquisition, improvement or increased value of the Matrimonial Property by effective household management or Child rearing responsibilities;
- h) any Order or award made under an applicable provincial law in favour of a Spouse concerning custody, child support, spousal support or division of family assets; and
- i) any other circumstances or factors in relation to the Interest which the Court may wish to consider.

10.7 Inherited Property

An Interest received by way of gift or inheritance by only one Spouse from a third person who is a family member, or by only one Spouse together with one or more members of that family, shall be given additional weight by the Court in considering the factors in section 10.6.

- 10.8** Where a proceeding has been commenced under this section, and either Spouse dies before all issues relating to Interests in Akwesasne Lands have been disposed of by the Court, the surviving Spouse may continue the proceeding against the estate of the deceased Spouse.

Section 11.0 Other Orders of the Akwesasne Mohawk Court

Preservation of Matrimonial Home and Matrimonial Property

- 11.1** The Court may, on the application of a Spouse or a person claiming an interest in the Matrimonial Home or Matrimonial Property:
- a) make a declaration as to whether or not the Interest on the Akwesasne Lands is a Matrimonial Home or Matrimonial Property; and
 - b) authorize a disposition or encumbrance of the Matrimonial Home or Matrimonial Property, provided that such disposition or encumbrance is otherwise authorized under applicable law, if the Court finds that the Spouse whose consent is required:
 - i. cannot be found or is not available; or
 - ii. is not capable or giving or withholding consent; or
 - iii. is unreasonably withholding consent.
- 11.2** If a declaration or authorization is made under section 11.1, the Court may:
- a) prescribe conditions including the provision of other comparable accommodation, or payment in place of it, that the Court considers appropriate;
 - b) dispense with a notice required to be given; or
 - c) make an Order under section 11.3, subject to such terms and conditions as the Court determines to be equitable and just in all the circumstances.
- 11.3** Regardless of which Spouse holds an Interest that is a Matrimonial Home, or Matrimonial Property the Court may on application:
- a) Order the delivering up, safekeeping and preservation of the Interest that is a Matrimonial Home or Matrimonial Property;
 - b) authorize a disposition or encumbrance of a Spouse's interest in the Matrimonial Home or Matrimonial Property, subject to the other Spouse's right of Life Interest as Ordered;
 - c) where it appears that a Spouse has disposed of or encumbered an Interest that is a Matrimonial Home or Matrimonial Property in a fraudulent manner calculated to defeat the rights of the other Spouse under this Law, or has falsely and knowingly represented in connection with a disposition or encumbrance that the Interest in the Akwesasne Lands is not a Matrimonial Home, direct the other Spouse to substitute other Interests they hold in Akwesasne Lands for the Matrimonial Home or Matrimonial Property subject to such conditions as the Court considers appropriate;

- d) make any interim or temporary Order to give effect to the purposes of this Law or to protect the rights of a Spouse; or
- e) make any ancillary Order which the Court deems necessary to give effect to this Law.

Section 12.0 Registration, Disposition and Encumbrance of Interests

Registration of Spousal Interests

- 12.1** Any Order granted under this Law or a notice made under this section may be registered in the Lands Register.
- 12.2** A Spouse who is a party to a Domestic Agreement and entitled to hold a Certificate of Possession under the *Indian Act* in Akwesasne Lands or has the right to acquire, inherit, own or transfer Matrimonial Property under this Law, may sign and register in the Lands Register a notice in the form prescribed by Council setting out:
- a) the full name and last known address of each Spouse who is a party to the Domestic Agreement;
 - b) a description of the Matrimonial Home or Matrimonial Property to which the Domestic Agreement relates; and
 - c) the provisions of the Domestic Agreement that relate to the Matrimonial Home or Matrimonial Property described in the notice.
- 12.3** A Spouse may register the notice described in section 12.2 in the Lands Register concerning an Interest in the Akwesasne Lands that is a Matrimonial Home or Matrimonial Property.
- 12.4** A notice under section 12.3 shall be registered in the Lands Register if the application is:
- a) in the form prescribed by Council; and
 - b) accompanied by an affidavit, signed by the Spouse attesting to the fact that the Interest in the Akwesasne Land is a Matrimonial Home or Matrimonial Property.

Disposition or Encumbrance of Matrimonial Home and Matrimonial Property

- 12.5** Where a notice has been registered in the Lands Register under sections 12.1, 12.2 or 12.3, no Spouse shall dispose of or otherwise encumber an Interest in the Akwesasne Lands that is a Matrimonial Home or Matrimonial Property unless:
- a) the other Spouse consents;
 - b) the other Spouse joins in the instrument of disposal or encumbrance;
 - c) the other Spouse has released all rights in respect of that interest by Domestic Agreement;
 - d) the Court Order has authorized the transaction; or

- e) the Court has released the Interest in the Akwesasne Lands from the application of this section.

- 12.6** If a Spouse disposes of or encumbers an Interest in Akwesasne Lands that is a Matrimonial Home or Matrimonial Property in contravention of section 12.5, the disposal or encumbrance may, on application to the Court, be set aside.
- 12.7** Section 12.6 does not apply where the person holding the disposition or encumbrance at the time of the application to the Court acquired the disposition or encumbrance for value, in good faith and without notice, at the time of acquiring or making an agreement to acquire the disposition or encumbrance, that the property was a Matrimonial Home or Matrimonial Property.
- 12.8** Where a person proceeds to realize upon an encumbrance or execution against an Interest in Akwesasne Lands that is a Matrimonial Home or Matrimonial Property, the Spouse who has a right of possession or other rights to the Interest under this Law has the same right of redemption or relief against forfeiture as the other Spouse and is entitled to the same notice respecting the claim and its enforcement or realization.

Section 13.0 Enforcement of Orders and Offenses

- 13.1** Enforcement Officers have the power to enforce Orders as provided for in this Law.
- 13.2** No person shall obstruct, interfere or hinder an Enforcement Officer, peace officer or Akwesasne Mohawk Police Officer in the carrying out of their duties or mislead them, make false declarations or refuse to disclose information to an Enforcement Officer, peace officer or Akwesasne Mohawk Police Officer.
- 13.3** Any person who fails to abide by an Order or acts in violation of this Law is guilty of an offense and upon conviction is subject to a penalty of a fine of not less than \$1000.00 but no greater than \$10,000.00.
- 13.4** No action or proceeding for damages shall be instituted against a Akwesasne Mohawk Court Justice, Mohawk Court Administrator, Enforcement Officer, peace officer, Akwesasne Mohawk Police Officer or any person working as an employee or contractor with the Akwesasne Justice Department for any act done in good faith in the administration of that person's duties under this Law.

Section 14.0 Appeals

- 14.1** An Order may be appealed to the appellate division of the Akwesasne Mohawk Court.
- 14.2** Until there is an appellate division of the Akwesasne Mohawk Court established, an appeal from an Order shall be heard by a Justice of the Kahnawake Mohawk Court.

- 14.3** 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 15.0 General Provisions

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

Section 16.0 Amendment and Repeal

- 16.1** This Law may be amended or repealed in accordance with the Akwesasne Law Enactment Procedure Regulation.

Section 17.0 Coming into Force

- 17.1** This Law shall be enacted in accordance with the Akwesasne Law Enactment Procedure Regulation.
- 17.2** This Law shall come into effect six (6) months after the date it is accepted by Council Resolution at a duly convened meeting of Council giving final approval under the Akwesasne Law Enactment Procedure Regulation.

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