

## CHAPTER IV

# On<sup>^</sup>yote a ka Tsi Teshakotiya to lehte

## Oneida Peacemaking System

### ARTICLE I

When the United States signed the Treaty with the Oneida Nation 1838, the United States recognized the customs and traditions of the Oneida People in the treaty. The treaty ratified the Oneida people's right to establish their own form of government, appoint their own officials, make their own laws and be ruled by them. The U.S. Constitution allows treaties between nations. Oneida is a nation. Therefore, when the U.S. signed the treaty with the Oneida Nation, a government to government relationship was established. This government-to-government relationship continues to be recognized in today's society by Congress, the Supreme Court, the executive office of the President and it's federal agencies.

In 1991, the Oneida General Tribal Council, in special session and ratified Resolution 8-19-91-A, establishing the *Oneida Tribal Judicial System*. Section IV of the Resolution prescribes how the Oneida Judicial System will be administered: *An independent administration of the Oneida Tribal Judicial System, which shall be know as the Appeals*

*Commission of the Oneida Tribe, shall select an administrator to administer the judicial arm of the Oneida Tribe, completely separate from any executive branch, legislative branch, and the Personnel Department of the Oneida Tribe in order to maintain the integrity of a separation of powers. The Oneida Appeals Commission . . . shall consist of eleven (11) Oneida Tribally enrolled members who shall have authority to hear specified original and appeals actions that arise within the jurisdiction of the Oneida Tribe of Indians of Wisconsin. Initially, the Appeals Commission considered Peacemaking as the way for resolving disputes, but too many tribal members hadn't even heard of it. At the same time, we recognized that the Appeals Commission was created to maintain the integrity of the Oneida traditional system of decision-making by ensuring that there is more than one decision maker for any issue. The principle of having more than one decision maker for any decision is past down Oneida's original form of governing structure, where the council had three representatives from each Clan, making it a nine member council. Disputes were also resolved within the Clans, which meant there was always more than one decision maker for any issue. Peacemaking was based on consensus and restoring peace and harmony to the families. Courts on the other hand, resolve disputes in an adversarial setting where a judge and or jury make the final decision.*

*This brought us back to Resolution 8-19-91-A. Under section the whereas section of Resolution 8-19-91-A, the 14<sup>th</sup> Whereas: An Appeals Commission will maintain the integrity of the Oneida*

*traditional system of decision making by insuring that there is more than one decisionmaker for any issue.* In reading this section of the Resolution, it appears that the General Tribal Council intended for the Appeal Commission to follow the traditional system of decision-making.

In 1992, the Appeals Commission invited individuals familiar with Oneida's history of government, along with individuals from other Nations like the Hopi, Pueblo, Seneca, Mohawk, and Navajo, known for following their customs and traditions. A series of discussions was held throughout the community with the primary focus on Oneida customs and traditions that could be used in a Peacemaking system. We found that over the years, Oneidas began to rely on state courts to resolve disputes. Generally, members of the community had little or no recall of traditional dispute resolution methods. We heard about the way our mothers; fathers and grandparents were taken away as children by the federal government. Oneida children were forced to attend boarding schools. They were whipped or severely punished in other ways for speaking their language. They were not told if any of the parents passed away. They were only six or seven years old when they were taken away and not allowed to come home until they finished school, even if their parents or relatives died. As victims of this abuse, our relatives decided they did not want their children to be victimized by the federal government. So they refused to teach their children the Oneida language, customs or traditions.

Many community members indicated that mediation would be better than a court. From these discussions, it became clear that we have a number of barriers to overcome. We must begin by speaking our language. By learning our, we learn about who we are. Our language goes to the heart of our way of life and preserves our history, values, ceremonies, strength, compassion, and good mindedness. The principles of Peacemaking are strongly based on Oneida's inherent form of government, which is, restoring peace and harmony to our family. We must overcome the historical factors that diminished our form of government. We must structure our government to handle the needs of our people in today's society. This is not an easy task.

## **ARTICLE II**

### **Good Words**

Kayanl@>kowa - the Great Law or Good Words instills unity and upholds the inherent way of all life on Mother Earth. We must protect the source of life, for without food we could not live, without water we could not live, without air we could not live. The Creator made human beings to live within these boundaries. The White Pine symbolizes Peace, Freedom and Democracy. The White Pine stands on the back of the Turtle with four white roots reaching out in four directions. We, the people of the Standing Stone, uphold this precious gift of peace, freedom and democracy. Should the Eagle warn us of danger, we will put our hands together, with such force as to protect and preserve this precious gift. After all, we are all related.

### **Oneida Clan structure.**

Oneida has three Clans - Wolf-Turtle-Bear. All children are born into their mother's extended family of her Clan. Each Clan has three representatives sitting on the council, making it a nine-member council. All three Clans discuss a Clan's decision until a consensus is reached. Starting with the Clans, each Clan becomes part of the decision-making process. The Clan system is the legal principle upon which Oneida's form of government is founded.

Historically, each Clan resolved its own disputes. The Oneida Nation has three Clans. The structure of each Clan includes Clan Mothers, Faith Keepers and sometimes a Pine Tree Chief. Disputes involving another Clan required a Clan Mother, Faith Keeper or a Pine Tree Chief from that Clan to resolve a dispute. Through this process, Clan Mothers, Faith Keepers or Pine Tree Chiefs were able to restore peace and harmony to the families. The sooner the dispute or disagreement was resolved, the sooner family members could return to their duties and responsibilities within the Clan. Each member nation of the Lotinuhshyuni= resolved disputes in a similar manner, without interference from other nations. The grand council of the Lotinuhshyuni= consisted of forty-nine family representatives, of nine Clans from five nations, plus one seat for Thatotalh% of the Onondaga Nation, making a total of fifty members on the Council. Lotinuhshyuni= decisions were by consensus, after Clan representatives discussed the issue and the solution for resolving that issue was agreed upon.

### **ARTICLE III**

The Peacemaking System is always an available remedy during a trial. If, during a hearing, it appears to the hearing officers that a dispute can be resolved through Peacemaking, the Hearing Officers have the discretion to recess the hearing to allow the parties the opportunity to settle their dispute through the Peacemaking process. If the parties agree, they will inform the hearing officers and the case may be stayed with jurisdiction for resolving the dispute turned over to the Peacemaking System.

If the parties choose a Judicial Officer to serve as the Peacemaker, they must inform the hearing panel. If it happens that the dispute cannot be resolved through the Peacemaking, the parties may return to the trial court. However, the Judicial Officer(s) selected as the Peacemaker can no longer serve on the case. Recommendation; individuals selected as Peacemaker(s) should have some mediation or facilitator training. A list of individuals who have completed facilitator or mediation training will be compiled as soon as possible and provided for review by the parties who wish to use the Peacemaking System. At present, a limited number of individuals have had training in traditional Peacemaking methods by Tribal members and formal mediation techniques. A list of individuals with training in this field has yet to be completed. Therefore, in the beginning, the Parties may have more than one person helping to facilitate the Peacemaking process.

*otherwise  
conflict*

Although a person selected to serve as in the position as Peacemaker should be knowledgeable about Oneida laws and customs

that may not always be possible. Some parties may want someone familiar with the Kayanl@>kowa - the Great Law or Good Words or the Kalihwi=>yo - the Code of Handsome Lake or Good News to be referred to for guidance during the Peacemaking process. If it happens that the person selected is not familiar with Oneida laws and customs, that person may seek the assistance of someone who is familiar with the Oneida language, traditions and customs to give them guidance during the Peacemaking session. We also understand that our values, customs and traditions may have been influenced with foreign values, customs and traditions over the years however, this does not take away from the principles of the Peacemaking process, which is consensus, peace and harmony for the people. The Peacemakers may be called upon to look towards other principles of living to satisfy the needs of the parties during the Peacemaking session.

### **The Agreement**

An Agreement reached by the parties is binding and carries the same force and effect as any court order, decision or judgment.

### **Enforcement**

Terms should be listed on what course of action will be taken if one of the parties cannot live up to the agreement. The primary source of enforcement here is the commitment that the parties agreed to when they signed the agreement. Due to the fact that the agreement is reached between the parties, their agreement cannot be appealed. If the decision were made by a third party such as a judge or jury or some other entity, either party could

appeal that decision. The agreement should include what happens if either party fails to abide by the agreement, and whether a Peacemaking session should be reconvened to resolve the matter. The Peacemaker would review the agreement. Both parties may agree that due to unforeseen circumstances beyond their control, the agreement needs to be amended.

#### **If Agreement Cannot Be Reached**

If it is determined by the Peacemaker that the parties have reached an impasse and that an agreement cannot be resolved through the Peacemaking process, then either party may file a complaint with the Oneida Appeals Commission and have the matter settled by a trial court.

### **ARTICLE IV**

#### **The Peacemaking Process**

Peacemaking is based on Oneida's traditional form of decision-making. Historically, when the Oneida council was in session:

- ▶ The Turtle Clan refined the concern or complaint until they defined the problem;
- ▶ The Bear Clan discussed the various solutions until they came up with one that would relieve the problem; and
- ▶ Once agreement was reached, the Wolf Clan announced it to the community.

Although this decision making process may not be the one followed in the Peacemaking session, a similar process is provided. Peacemaking has three basic steps:

1. Defining the problem,
2. Discussion and possible solutions to the problem,
3. Agreement to the solution, however due to confidentiality, the agreement is not announced to the Community.

### **Defining the problem**

Defining the problem is done by listening to everyone define and redefine the problem until they agree. All negative emotions will be stripped away before getting to the root the problem.

### **Agreeing on the solution**

Once the problem has been defined, it is easier to discuss. When the problem has been defined, the Peacemaker should let everyone know that they have just agreed on what the problem is. The next step is looking for a solution. Having everyone pose a solution involves listening to everyone's ideas on the problem can be resolved. The agreement may be very detailed or very general. It is important that the Peacemaker ensure that the parties are kept aware of all the concerns raised so these concerns can be addressed during the session or placed in the agreement. The agreement, whether general or detailed, should include alternative measures that can be imposed should either party not be able to live up to their end of the agreement for any reason, such as sickness, death, disabled, loss of income, or home, or divorce, or any other unforeseen circumstance that might arise. Both parties may want the Peacemaker to reconvene a Peacemaking session to resolve an issue. This kind of solution has the most acceptance, making the agreement more workable. The Peacemaker should remind everyone of their commitment and thank them for their willingness to participate in the Peacemaking in the closing ceremony.

### **Agreement not Announced**

At one time, an announcement was made requesting the community support the parties so they could live up to their responsibilities under the agreement however, in today's society, that may have a negative impact on the parties. In the beginning, it was stated that the Peacemaking Process is confidential. Any announcement giving the details of the agreement would defeat the purpose of confidentiality. Therefore, an agreement is and will not be made public by the Peacemaker or the Oneida Judiciary.

## ARTICLE V

### I INTAKE PROCEDURES FOR PEACEMAKING

4. The Clerk will inform parties filing a petition that the Peacemaking System is available for resolving disagreements.
5. The Clerk will ask the Parties if they wish to have their case settled through the Oneida Peacemaking System.
6. If the parties decide to use the Peacemaking system, the Clerk will have the parties fill out the appropriate forms for the Peacemaking System.
7. The Clerk will assign the case a number for case management purposes.
8. The Clerk will inform the parties that if they wish to have any witnesses, that witness appearance is entirely the parties' responsibility.
9. The Clerk will show the parties a list of individuals from which to choose a Peacemaker.
10. The Peacemaker will do the follow up on what the dispute is about and set a date for the Peacemaking session.
11. If the dispute involves Social Services, or other service providers, the Peacemaker may ask the parties if they want the service providers to attend the Peacemaking session. If they do, the Peacemaker will inform the appropriate personnel.

*Administer for  
witness need to  
agree*

### Confidentiality

12. Peacemaking sessions are confidential and not recorded. Any and all statements made during in the Peacemaking session will not be recorded. The Peacemaker

cannot be compelled in way, or subpoenaed by court order, or any other means, to reveal any part of any Peacemaking session.

### **Peacemaking during hearings**

13. Judicial Officers may ask the parties at the pretrial meeting conference if they want to resolve their disagreement through the Peacemaking System. If the parties agree, the hearing proceedings may be stayed and the case will be turned over to the Peacemaking system for resolution.
  
14. Judicial Officers must appraise the parties that if they cannot reach an agreement in the Peacemaking System, they cannot quit in the middle of the process. Parties may bring their dispute back to the court, but only after the Peacemaking process has been completed.
  
15. Prior to the end of a hearing and before a final judgment has been reached, either party may move to have their dispute resolved through the Peacemaking System. If the parties agree, the Judicial Officers must inform the parties of the following:  
(1) If the hearing continues and the court decides the outcome, parties have the option to appeal the court's decision to the Oneida Appeals Commission Appellate Body, (2) however an Agreement reached in the Peacemaking System cannot be appealed, and (3) after jurisdiction is transferred to the Peacemaking System, parties cannot change their mind in the middle of the stream and opt to return to court. If the parties reach an impasse, which the Peacemaker believes cannot be resolved, the parties may agree to drop the issue. But, if the parties agree that the only way to resolve the issue, is before a trial court, then the Peacemaker must attest to the fact that an impasse has been reached, and the only way to resolve the dispute is to have the matter tried before the trial court.

*transfer of  
jurisdiction  
from Court*

### **Attorneys not allowed to practice**

16. Parties, not attorneys, openly discuss their disagreement before the Peacemaker(s) until they come to an agreement. This allows both sides to explain the reason for the disagreement. This also helps the parties to settle the disagreement with a mutual understanding. It must be recognized, there are times when a party may invite a friend, or other relative to speak on their behalf. This is acceptable. A party may even ask for an attorney to speak on their behalf, however in doing so, the attorney is not allowed to practice or represent a party as a client like in a court of law.

### **Personal Commitment**

17. Peacemaking requires the personal commitment to listen to each other, and identify areas of common concern, which is extremely helpful for the parties to explain their understanding for the reason behind the disagreement.

### **Peacemaker Authority**

The Peacemakers serve as a facilitator, not a judge and therefore cannot and do not have the authority to render a decision. The Peacemakers serve to help the parties identify the reason behind the disagreement. Often, the issue causing the disagreement is not the real reason the dispute exists, but instead the disagreement is based on a behavior that occurred between the parties themselves or their family, which they have not forgotten and the recent incident merely triggered emotions.

18. Attorneys are not allowed to practice or enter pleadings for either party in the Peacemaking System. Parties may either speak for themselves, and / or invite others including attorneys to speak on their behalf.

*NO ATTS*

19. There is a pervasive search for the reason behind the disagreement, on which the parties can agree. Peacemaking is not fact finding in nature nor is it dependent upon rules of evidence, or offers of proof, or cross examination of witnesses.
20. An oath to tell the truth is not required for a person to speak. Traditionally, it is expected that when a person stands up to speak, their presentation is given from their own perspective.
21. After the parties have reached an agreement, it is written down by the Peacemaker(s). The Agreement identifies the disagreement and the manner by which the parties agree to settle that disagreement. The Agreement is then signed by the parties and the Peacemaker(s).
22. Each party receives a copy of the Agreement and the original is maintained by the Peacemaker(s) in the Peacemaker System record file located at the Oneida Appeals Commission.
23. Agreements coming from the Peacemaking System cannot be appealed to the appellate court. If the parties cannot reach an agreement, the Peacemaker(s) may have to step in and remind the parties of that they both made a commitment to try and resolve their differences through the Peacemaking process. Perhaps the only agreement is that the parties agree that the disagreement can only be decided by a third party.

### **The Agreement**

Decisions or agreements reached by the parties in the Peacemaking System carries the same force and effect as that of the court. Therefore, either party in the Peacemaking System may petition for enforcement of an agreement or decision reached by the parties

in the Peacemaking System. The process for filing a petition regarding either party=s failure to live up to their obligation to fulfill the agreement is: (1) petitions must be filed with the Peacemaker(s) and Peacemaker(s) will attempt to resolve the disagreement, (2) if Peacemaker(s) are unsuccessful they may issue an order for the delinquent party to live up to their side of the agreement, (3) the Peacemaker(s) may issue an order regarding the party=s failure to abide with the Peacemaker(s) to the appropriate agency of the Oneida Nation for enforcement, such as the Oneida Police Department, Social Services, Garnishment, Division of Land Management or other Oneida agency.

## **ARTICLE VI**

### **II RULES OF BEHAVIOR**

24. Parties must agree to rules of behavior prior to session
25. Swearing or cussing or pointing, or fighting or offensive gestures is not allowed.
26. A person may choose to hold a symbol like a feather when they speak.
27. No one is allowed to interrupt a speaker.
28. Everyone will have an opportunity to speak.
29. Remain quiet and show respect and listen to what the person is saying.
30. It is disrespectful to interrupt a person when someone else is speaking.
31. If you have something to say, please stand.
32. Attorneys are not allowed to practice in Peacemaking sessions, but may be called upon by either party for testimony directly related to the disagreement.
33. Intimidation not allowed.
34. Show respect for yourself and others and conduct yourself in a dignified manner.
35. Peacemakers cannot draft an agreement.
36. No one can come or leave unless the Peacemaking calls for a break.

## **ARTICLE VII**

### **III THE PEACEMAKING PROCESS**

## **Opening**

1. Opening ceremony may be conducted by the Peacemaker or a another person.
2. Describe background, history, and steps of the session.
3. Explain and discuss the Rules of Behavior.
4. Explain that Peacemaking is not recorded but a record is kept to show that Peacemaking has occurred. Even though the Peacemaking session is not recorded, the disagreement appears in the petition filed and in the agreement.
5. Explain that the Peacemaking is confidential and will not be recorded.
  
6. Explain confidentiality, parties must understand what can or cannot be reported out.
7. If the rules are not followed, the Peacemaker may call a recess for a cooling off period and return at a later time and / or date. The Peacemaker may have to remind everyone of the rules of behavior from time to time. If requested, a traditional person or another person may be called upon to review the principles of behavior which the parties are familiar with.

## **Questioning & Listening**

8. The first speaker is the person who filed the petition regarding the disagreement.
9. The second person then has the opportunity to give their understanding of the disagreement.
10. The Peacemaker(s) then will give a brief review of what the parties have agreed upon in their presentations.
11. The first person may speak again and may call upon others in the community to contribute their understanding of the disagreement.
12. The same respect is extended to the second speaker.
13. Traditional leaders or another person may be called upon for guidance by the Peacemaker or the parties at any time during the session.

14. Peacemaker(s), may have to restate the underlying problem to help identify how disagreement got started.
15. Important to allow parties to vent their feelings.
16. Remind parties of the Rules when necessary.
17. Remind the parties that the objective is to keep moving toward a resolution.
18. Encourage and allow open communication.
19. Allow supporting documents.
20. Allow conferences when necessary.

#### **Problem solving statements**

21. Once a problem is identified, seek solution from the parties, family members and others present such as service providers, social services, the Chiefs, Faith keepers, and Clan Mothers.
22. If necessary, revisit the investigation and questioning phase.
23. Include the disagreement along with the solution in the agreement.
24. Restate purpose of peacemaking system.
25. Provide counseling, if necessary.

#### **Summarize**

26. Restate the disagreement and the problem that led to disagreement.
27. Review what has been said and what parties agreed to.
28. Restate the disagreement and proposed solution in the agreement, again.

#### **Commitment/Solidarity**

29. Have the parties write the proposed agreement down.
30. Read the agreement out loud.
31. Remind parties of what they agreed to earlier.
32. Remind parties of their responsibility to comply with the agreement.

33. Ask parties to sign the agreement.
34. Ask parties to shake hands.

### **Closing**

1. Explain that the agreement is binding.
35. Explain that the parties are expected to live up to agreement.
36. Explain the next step if either party fails to live up to the agreement.
37. Explain penalties if either party fails to live up to agreement.
  
38. Thank everyone for agreeing to settle their disagreement.
39. Closing ceremony by the Peacemaker(s) or traditional leader.

ON^YOTE A KA TSI TESHAKOTIYA TO LEHTE  
Oneida Peacemaking System

Case No. \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_ M.

Hearing Date:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

Enrollment No. \_\_\_\_\_

Enrollment No. \_\_\_\_\_

**Disagreement:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Agreement to resolve disagreement through Peacemaking System**

We agree to participate in the Peacemaking System to resolve our differences regarding the disagreement over the following issue(s):





*systems, and circuit rider systems, established by inherent tribal authority whether or not they constitute a court of record.*@ This Act reaffirms and recognizes that tribal governments have different customs and traditions for resolving disputes.