

# MINUTES JULY 28, 2007

## General Tribal Council Meeting

Regarding: Sovereign Immunity of the Oneida Tribe of Indians of Wisconsin

July 28, 2007

Norbert Hill Center – 10:00 a.m.

Present: Gerald Danforth – Chair, Kathy Hughes – Vice Chair, Mercie Danforth – Treasurer, Patty Hoefft – Secretary, Paul Ninham, Trish King, Melinda J. Danforth, Vince Dela Rosa – Council Members

Called to order by Gerald Danforth at 10:15 a.m.

Parliamentarian: Jo Anne House

Quorum: 157

## Agenda

Opening by Richard Baird

**Chair** Asked the Chief Judicial Officer, Winifred Thomas to join him for brief comments to GTC regarding the manner they went about resolving differences between the two bodies of the Business Committee and Appeals Commission. Spoke of a Memorandum of Agreement between the two bodies and how he tried to resolve the issue during the past year. It was a gratifying appreciation on how Oneida can overcome resolutions compared to other parts of the country.

**Winnifred Thomas** Greetings from the Appeals Commission. Thank you for coming for your voices to be heard. It's important that GTC comes together as a people. I hope each one of you reach inside yourself and make a decision today for the Oneida Tribe, not for my agenda, not for Jerry's agenda. Thank you.

## Approval of the Agenda

**Action** Motion by Pearl McLester to approve the agenda, seconded by Nadine Escama. Motion carried.

## Presentations

### Regarding Resolution 12-20-06-J

**Kathy Hughes** Good morning. I plan on making this brief so we can get into the discussion component of this meeting. The purpose of this meeting is to discuss Tribal sovereign immunity which is an inherent right as defined in numerous federal court decisions and an integral part of our constitution. Waivers, if granted are specific and limited and only granted by the GTC, and/or the Business Committee. As an elected official, my first duty is to make every decision keeping in mind the tribe's

sovereignty. The Sovereignty Immunity Ordinance itself was adopted by the Business Committee on 10-20-04. The ordinance basically formalized what had been occurring as a common practice for decades. From the inception of the constitution to the adoption of this ordinance, sovereign immunity was defined and waived by the Business Committee or GTC. So it wasn't putting anything new in place.

The authority for the Business Committee to adopt the Sovereign Immunity Ordinance was the APA act that was adopted by GTC on August 19, 1991. It was amended by the Business Committee on September 7, 1994 and ratified by GTC on July 5, 1995. A review of what brought us to this situation, I think is basic. There have been decisions made in the past where there were concerns by the Business Committee. The difference is those decisions was first of all, they either dealt with an employee, employer situation. The personnel policies and procedures have an implied waiver of sovereign immunity because they grant a due process to the employee and to the employer when there is a grievance or a complaint that ultimately can reside with the Oneida Appeals Commission for resolution. The other are contracts. The Business Committee approves all contracts with the language in it that specifies a waiver of sovereign immunity. The language is usually very limited in term and limited in the scope of the waiver itself.

The current situation is that we have an individual looking for #1, a guaranteed job and #2, monetary damages. There is nothing in policy, in past practice, in laws, codes or ordinances that allows this situation to occur unless there's a waiver of sovereign immunity by the Business Committee. The Appeals Commission by accepting this case are saying they have the right to determine if sovereign immunity can be waived. We're saying only the Business Committee or the GTC can make that decision. If the Appeals Commission gets to decide when immunity exists, the tribe will be at risk with every decision made by its elected officials. And the hands of the government move in essence, from your elected officials to the Oneida Appeals Commission.

Sovereign Immunity bars the commission from hearing the case period. Therefore, we're before you today asking for your support of the Business Committee to uphold the Oneida Constitution and adopt the resolution, affirming the adoption of the Business Committee resolution regarding the protections of the sovereign immunity of the tribe. Thank you.

**Chair**

Asked GTC to have both presentations first, then open it up for discussion.

**Winnifred Thomas**

While in agreement in part, were here to decide today, along with sovereign immunity is the resolution from the Business Committee. The Appeals Commission unanimously has taken the stand that a member's rights had been violated. We are here to see if the Business Committee could make that decision as to whether you as a member have the right to request or come into the judiciary and appeal or file for monetary damages,

etc. What every one is missing is the interpretation of sovereign immunity. It needs to be defined to each and everyone of us. Sovereign immunity also protects your rights. In this case, and we cannot speak to this case or to the merits of this case, but we can speak of the appellate decision of the case. This case has come before the judiciary no different than any other case that has come before us since 1991.

My question is "What makes this case so different?" I don't have a clue. Other cases before us had asked for monetary damages. We've completed those cases. What is happening with this case, is that it is not being heard. The individual is not being allowed to be heard. Kathy is correct, according to the Constitution, every member has that right, that is the stance we are taking. If it weren't just the one individual, it could be any one of you. In a court case, we have winners and losers, at least you had the opportunity of being heard. The process should never be interfered with.

Let the process continue, that's why we're here today, to let the process continue. The entities involved, stay involved. I've pointed out that cases have come before us to the Chairman and have continued to go to judication and they have asked for monetary things. The Appeals Commission is not there to waive sovereign immunity, we have never waived sovereign immunity. We're not there to decide who can or cannot be heard. It is our job is to take every member's complaint and appeal if it fits the criteria that has been handed down and voted on by you, the GTC, under the APA, under our rules of civil appellate procedure.

Sovereign Immunity affects exterior, it's nation to nation. We don't want to hold sovereign immunity on the back sides of employees or back sides of membership. We do not want to see sovereign immunity as that veil between management and employees or membership. The Sovereign Immunity Ordinance needs work, help, because it's not membership friendly. Today, we are here to get everybody back in the process, to afford that member the due process that has not been allowed to that person. Remember, that person could be you, it could be me.

**Chair**

Suggested to GTC that they move next into discussion.

**Discussion**

**Yvonne Metevier**

Discussed the Business Committee's December 2006 resolution and named those who voted for and against it. Felt it was precedent setting. Felt the term sovereign immunity was often used as a club against our heads. It meant we have the rights to make laws and enforce our laws, but not the right to break our laws as our leaders have done. This is not the first time the chair has ignored laws for his better purpose, the 1999 per cap meeting. We must put a check on our Business Committee to protect ourselves.

**Sherrole Benton**

Hello. I'm Sherrole Benton. Thank you for this opportunity for us to gather and discuss this issue. I'm very concerned about this issue. The reason why is I'm

personally not confident the members of the Appeals Commission can actually define and present this issue. Last year we had a Public Hearing on whether or not we would institute a Tribal Court. I made a presentation in that hearing along with many other tribal members.

In that Public Hearing, there were a lot of people who felt the Appeals Commission was not ready to be our judges, our legal representation. One of the main reasons is that they are not educated in the law. They are not lawyers, they are not legal professionals, they are not judges, they are not a court. They are an Appeals Commission, part of an administrative procedure. Why they sent out mailings calling themselves the Oneida Judicial System concerns me because they are not a court. They are elected by popular vote.

There are no qualifications. We don't have a job description for them. They go to training but we don't know how much they learn or what expertise that brings to any of the hearings that they conduct. Many people are really perturbed that they want to call themselves a judicial system or judges, or lawyers, or legal professionals because they're not. We know they're not.

Why we keep the name secret to me is a little curious because the hearing has already been in a Public Hearing. I think one of the Appeals Commissioner has a conflict of interest by even speaking to this issue and representing the individual in this case. I think the Appeals Commission ought to do their own investigation and due process and look at that conflict of interest. This is another reason why the people cannot totally trust the Appeals Commission because they can't be neutral, they can't be impartial, they can't be objective. We're looking at a prime example of that here today.

The people who are related ought to recuse themselves, excuse themselves and let other officials speak to this and present this. This is a real concern. This is why in the Public Hearing I suggested that we need to hire judges on a consultant basis to hear our cases in an Oneida Tribal Court. Not another Oneida who we can't trust to be non-bias, impartial and neutral because they might be related, or there might be a feud or tiff going on among us. We need to have totally objective, totally neutral individuals hearing our cases. I'm going to say it today that the Appeals Commission is not the Oneida Tribal Judicial, it's a commission. Thank you.

**Madelyn Genskow**

Commented on Sherrole's statement on the Appeals Commission being an elected position and training. The Business Committee doesn't have to have qualifications either or get special training. To Appeals, I'm concerned that it be retroactive and not just applied to this person. This sort of thing happened to people in the past and if approved, should be retroactive. Her question was whether the actions Winifred is requesting for this person, whether that decision will be retroactive to other Oneidas who felt they've been in the same situation.

- Chair** What is on the floor to GTC today is the resolution. The Appeals Commission prepared a resolution and sent it out, it looked similar to what the Business Committee sent out, however that is not what is on the floor today. The resolution before GTC is the one on in the packet.
- Winnifred Thomas** Responded to Sherrole Benton stating the Appeals Commission referred to themselves as judicial. The 8-19-91 resolution refers to the Oneida Tribal Judicial System. Appeals Commission receives training through the National Judicial College in Reno, NV. Today, we have to keep in mind that were here to review this one thing that brought us all here today. To Madelyn, I don't understand what your alluding to regarding retroactive. I would have to say no.
- Madelyn Genskow** There have been cases in the past were the Appeals Commission decided a person was terminated without good reason, the Business Committee just ignored it. I'm taking about cases like that where a person may have been entitled to back pay and didn't get it.
- Winnifred Thomas** Could we go back? No. We can only go forward.
- Madelyn Genskow** I wish it could be retroactive because of the people I know. However, going forward with representation for GTC is important.
- Sharon House** Good morning. My name is Sharon House and before you throw things at me, yeah, I helped draft this document. What I'd like to do is bring out some clarifications that maybe some of you are unaware of so it helps you in your decision making. One of the issues I keep hearing is sovereign immunity.
- I believe the Business Committee did what they did based upon the fact there was concern as to what would happen if this case was lost, if that immunity was broken. I understand that and I believe they did what they did based upon the fact that they knew what could happen. What could happen is we could end up in front of somebody else's court. That's what could happen if this goes through.
- That doesn't mean the Appeals Commission intended that to happen. Maybe they wouldn't have even decided that the case could go further. But we could see that the system is broke down now because number one, you have an Appeals Commission that's sitting as a judicial body that's brought something forward politically. Which was one of the first intents of why you have an Appeals Commission, is that they stay politically out of it. That's it. They saw an injustice and I believe they felt that the only way they could get heard was through GTC. I believe that.
- The problem is that the breakdown is in the system. The other breakdown with all due respect to both the Appeals Commission and the Gaming Commission, is the fact that somebody jumped the gun.
- The Appeals Commission in her mind should have been allowed to say, "No, you can't bring this forward because there is no enabling legislation to say that there

could be damages.” I believe there needs to be a law written and there needs to be more enabling legislation coming from our political body which is our Business Committee, that says number one, this is the jurisdiction you have, number 2, this is what you can hear cases on. I don’t know if that’s been done.

It can’t come from the Appeals Commission itself. They can do their internal policies and procedures but what they cannot do is to say what their jurisdiction is. It can only come from the Business Committee. If the GTC are the ones who failed to recognize that, then we have to take the blame. We have to say, where are the enabling documents that say they have jurisdiction over certain items?

If I’m wrong in that and I don’t know where that enabling legislation is, then that’s my fault for not seeking that information. But right now what I see is a straight up breakdown. And the reason it’s a breakdown right now is because we’ve hit a different point in time. The intent of this particular document was not long term. The intent of this document was so we could get grants from the state of Wisconsin and the federal government. That’s what the purpose in this was.

The other purpose was in drafting this, we had to cut the whole thing down. And Kathy Hughes, I think you can remember that. Lois, I believe was on the council at that time where we knew if it was too thick of a document, like you need for this judicial body, it would not have gotten passed because it was right after that time when GTC said you cannot have a court.

And nothing was going to get passed and we weren’t going to get grants. We have to recognize that. From my perspective because I had worked with so many of the committees, commissions, departments, we didn’t have a judicial decision making body that was separate from the government.

That’s a big part of this. It was suppose to move forward without the government being involved in certain areas so that basically, they could get elected again. Anytime you get involved with personnel, something happens. Somebody gets removed. But anyway, what it came down to, you need a process for employment rights. Especially here.

And with all due respect to Sherrole, to hear that we can’t make our own decisions, that really PO’s me. Don’t let me get further. I get very upset because I believe we can make our decisions. That’s why this was also drafted. The employment rights, our ability to make our own decisions. The judicial system of any entity is the strongest form of sovereignty that shows you can make decisions on your own.

To say we need somebody else to come in when we got seventeen to eighteen thousand members, does not make sense to me. Maybe I’m wrong at that too, but I don’t really care. Because what were looking at here is something basic. This system was going to break down at a certain point and we hit it because there’s too much knowledge. It’s true, we’ve hit a different level of knowledge. People know what their

rights are, other people know hey, how come they are getting so much back pay?

Well, if they can get a whole bunch of back pay then it better be an enabling legislation that says that because you are taking money away from my kids, my grandchildren. That's the bottom line. It needs to be smoothed out so we can't even come in here and blame somebody.

This is an extremely important decision. We've hit a point that was initially intended to have a judiciary act that focused on lesser number of judges. And we could be just honest about this so that the system was not so expensive. You had people who knew the law, that was one of my main attempts. That you didn't have a legal profession that took over fact situations, that the Oneida people could make decisions without having legal training. They could get it after, find out up to a certain extend in their particular areas, and you'd have experienced people over 12, 13, 14, 15 years.

But we've hit a point of breakdown and if we move forward on either of those resolutions, I think we're doing ourselves a real disservice. It's a breakdown and let's just recognize that. There needs to be a different system now, it needs to be tightened up. Why do you think there are so many commissioners? So they'd never hear their relative's case. That was the intent and with all due respect, sometimes I can walk in here and look at a lot of the people and say, that's my relative, that's my relative, that's not going to happen. You can have three, you can have five, you can have twenty. It doesn't matter, somebody is going to be related to somebody else.

And based on that, there needs to be, and it's my opinion only, there really does need to be a change in the structure and if we take action on any of these resolutions being brought forward, I think it's going to hurt us. I'm concerned as to number one, why the Appeals Commission didn't go forward without coming into the political forum and make the decision based on what they had. Number two, why the Business Committee didn't wait until they made their decision, but jumped ahead.

Those are the bottom line questions and I hope, no I know, I've know most of these people since a long time and I know why they made the decision. They wanted to stop an injustice on both sides. For the tribe, from the sovereign immunity stand point, and from the individual protecting right side. Well now, who can hear that case? Nobody can hear the case, it's done. The Appeals Commission is going to have to dismiss it because there's nobody that's unbiased. We should not be going to the outside asking other judges to come in here when this is our law. And you may not like your law and sometimes I don't, then you need to ask these guys to change it. If they change it, I'm cool.

The Appeals Commission says your right, we need to finish this case up, which I don't think they can do now, it's going to be very difficult. Somebody's going to

say, "You've heard everything, your going to be biased." That's not disrespectful, it's saying we're human and we get biased easily. If that was my son you were talking about, well maybe, let me rephrase that, but we got to be realistic about this and say we need people who are not going to be biased or attempt to be unbiased. But we need a structure change, we've hit that point. Thank you.

**Matt (last name not stated)**

Are we using detectives, lawyers for each side? Is this claim decent or a corrupted lie? Questioned what does the lawsuit claim. Does it seem like its lying, does it make sense? Detectives should investigate to find the truth to make sure people are innocent or guilty. Investigate it at least to make a judgement.

**Chair**

The merits of the case is not for discussion.

**Michele Mays**

I'm the attorney actually on the case being discussed.

**Chair**

Are you a tribal member?

**Michele Mays**

I'm an enrolled tribal member. I've heard the different comments made. It's important to restate the 1991 resolution that made them a tribal judicial body. It specifically stated in the judicial code that the Oneida Tribal judicial system is regulated by rules approved by the Appeals Commission and does consist of two levels of judicial review. So, to the people of Oneida, this is your tribal judicial court system. If you want your rights or concerns or complaints to be heard, it's the Oneida Appeals Commission to who you go to.

My concern as a tribal member who has a lot of family who lives here, and live here as a result of this particular resolution that is before you, your rights would not be put before any tribal system. Your due process right which are allowed you in the Oneida Constitution would basically be taken away from you. There is a small waiver of tribal sovereignty. If someone acts outside the scope of authority, that would be a waiver of sovereign immunity that would allow you to bring suit because they acted outside the scope of their authority.

For example, harassment, obviously they are not allowed to harass you while your employed. Discrimination, they can't discriminate against you. All of those things are acting outside the scope of their authority which waives the sovereign immunity.

Regardless of that, if you pass this resolution today, what you are ultimately saying is that you don't need any due process rights. If anything happens to you by any tribal entity, by any tribal department of any sorts and you don't like it, oh well, you have no where to go. If you pass this resolution, you are basically saying, "It's ok, I have no where to go to take my claim to, I'm just going to sit back and take it." And that's how our system is unfortunately set up to work.

I agree with Ms. House that this has to be revamped and re-worked so that you as a people have rights that you can take forth through your judicial system.



It's important to state that while they've discussed that there is disagreement between the Business Committee and the Oneida Appeals Commission, that agreement was not followed when the Business Committee passed this resolution. There was no discussion between the Appeals Commission and the Business Committee before the Business Committee decided to pass this resolution.

The Code of Ethics also abodes to the Business Committee and specifically states that it's the responsibility of your government officials to maintain a separation of power between the Business Committee and the judicial system. They've violated, in my opinion, that Code of Ethics. Instead of waiting like Ms. House suggested, they acted and did not maintain that separation of power. You can't have a system that works if one is going to continue to step on the other's foot. That's what has happened in this matter and can happen continually in the future if this resolution is passed. Then you might as well not have a tribal judicial system at all.

That means the Business Committee, whenever they're unhappy about a potential decision is going to be able to say, "You know what, we don't want anybody to participate in that case because we don't like what the resolution may or may not be." That's for the judicial system to decide. They are the one's responsible to decide what the law is, how the laws apply, not the Business Committee. I ask that you think of yourselves today, do not pass this resolution or you are giving up serious rights for yourselves, thank you.

**Kathy Hughes**

I guess we disagree a little on the interpretation that there's no venue for a tribal member to go to when they feel they've been discriminated against or harassed by an employee in any given situation. Of course, there is a venue for that. It's very clearly defined in the Personnel Policies and Procedures and using that process should have gone before the Oneida Personnel Commission for a hearing and for consideration. It may have gone on from there, but that process was not used. It's one that's been in existence and used by hundreds of employees over the last several years. So it's one that should be very familiar. And if it's not, because there were some difficulties in understanding it, the GTC previously directed us to establish employee assistance reps which we've done. They exist in HRD and I believe gaming also has them, so there's no reason why we shouldn't be able to get the information we need to follow that process.

To say there's absolutely nothing is just not accurate. Sorry. But she's talking about an employee, that's where it initiated.

GTC Inaudible, tribal member.

**Kathy Hughes**

I understand that, but you still have a concern because a tribal employee didn't do something you felt ...

GTC Tribal member!

**Chair**

Time out. We're moving through this meeting in an orderly fashion. It's not respectful to have outbursts. The question was raised, responses were given.

The Chair addressed the part of the Memorandum of Agreement that deals with the allegation that there was no communications to the Appeals Commission in regards to the action taken in December by the Business Committee. In fact, there were two other instances, two other cases that were decided by the Appeals Commission that had given the Committee a concern about the level of jurisdiction that the commission was beginning to take. One was an employment case where an appellate body made a decision. It dismissed the case, but then it went on to direct an order to the Legislative Branch of government which was not something that it had before it.

That was raised by me on behalf of the Committee to the Appeals Commission through the Chief Judicial Officer. Another instance was a memorandum that was issued by the Appeals Commission, more of a policy memorandum that had to deal with the Per Capita distribution for that particular year. That also went to the point where it appeared to the Committee the Appeals Commission was acting in a capacity of legislative body writing policy and that was raised in the course of the meetings.

These meetings occurred in September, October and December of last year. Now, this particular case could not be addressed because the case was in progress at that time and could not be talked about. But the particular two other cases with regards to the jurisdiction, was raised with the Appeals Commission. As soon as the Committee's action in that resolution in December, that resolution along with a letter was delivered immediately to the Appeals Commission. That's about the extent of our dialogue with regards to the issue that's currently here to be addressed, the sovereign immunity.

**Kerry Burnett**

The Appeals Commission was established in 1991 to protect our liberty and human rights. Without them, we wouldn't have any. The last government attempted to destroy every human decency that we had. Don't tell me we don't have enough experience in our Appeals Commission. (Inaudible).

**Bob Christjohn**

I'm a member of Appeals Commission. I'm also commissioner hearing this case. I have to watch what I say. As an Appeals Commissioner, I came today with a heavy heart. Section 6 of the Oneida Constitution guarantees each member due process of law. It doesn't define due process, it's up to us to define. But you have to have a fair hearing. When the Business Committee makes decisions that clearly states no employee can participate in given court action, it didn't say ramifications, it just says you can't do it. It provides that your not provided with evidence or witnesses. I'm ashamed to be part of that operation, the bottom line it that it could be corrected today by overturning the December 6, 2006 resolution that trampled on individual rights. If one loses their rights, we all lose our rights.

We must turn over that resolution to protect individual rights. As a commissioner, I'm not biased, I don't know what the case is, it hasn't been brought before me. Let me hear the case, I've been elected to do that to the best of my ability.

**Owen Somers**

After reading the resolution passed by Business Committee, I know that in any other civilized community in this country that the legislative branch and judicial branch have to be separated. It seems to me, Ms. House talked a little bit on it, taking cases outside the tribe. It seems to me this emergency resolution has done just that, they've opened up a flood gate for violation of the Indian Civil Rights Act. Which means a case can now go to the federal government outside the tribe. It seems to me that this resolution has done more harm in threatening the sovereign immunity of the Oneida Nation than any one individual or cases has done before. I'm appalled that this Business Committee has taken the action that it did. It sounds like something that would happen in a third world country, an overthrow of sorts.

It scares the heck out of me that elected officials can sit there and pass something like this just because you don't like maybe the individual or some other things and then you hide behind it and say its not the individual, it's the case. I don't believe it, I've been here fifteen years and I've been stabbed in the back by a number of people through the years, I know how people operate.

We say prayers before these meetings, we hug, kiss and say mediation and go right back to the ways of hurting each other. We need the separation. The Business Committee needs to stay out of judicial matters. It seems to me that were going to be in some serious trouble here if this resolution is not overturned because someone will take it to federal court. At the federal level, City of Green Bay, the action taken by the Business Committee would be grounds for removal from office. I'd be very careful.

**Patty Hoeft**

I'm one of the three who voted against the 12-20-06-J resolution and didn't expect to be talking about it today. I think what people need to understand this is how I saw it. We have several problems that aren't clear: one of the questions is, who waives sovereign immunity and under what circumstances. The issue of sovereign immunity I think is clear, it's inherent, we have that for the Tribe. But who within the tribe has the authority to waive it and under what circumstances? That question needs to be answered and I think that's one of the questions Sharon House referred to. Sharon House is right on, we are in a breakdown. The rules we use to govern ourselves aren't able to handle the complexities and difficulties we're now facing because of the growth we've had.

Again, one of the questions is, who waives sovereign immunity and under what circumstances. Part of the dispute between the Appeals Commission and Business Committee, I think is based on that question. The Business Committee believed the Appeals Commission waived the sovereign immunity of the tribe and there's a disagreement.

The other question is what remedies are available to people, tribal or non-tribal who claimed to have been harmed by the tribe? I think you've heard a little of that today too, some people feel there are no remedies. I believe that's true myself. Part of the what we need to do is create law that defines what those remedies are. We have them in states, other courts around us.

The other question is what principles would the Oneida Appeals Commission use for judicial restraint? I think they have some of those principals in place already, it's a matter of us as a community understanding what they are. One principle that state and federal courts use is making sure the cases justice-ability, when is it clear that the court has the right to hear the case? There are a number of things courts use to make that decision if they can hear it. One of those things is, has the person filing the claim exhausted all their remedies? That's another question that's unclear in this situation. There's a dispute between the Business Committee and Appeals Commission.

The Business Committee thinks the Appeals Commission did not ensure the person filing this claim exhausted all remedies. That's where you heard the Vice Chairman claim the person should have went to the Personnel Commission. Whether they should have or not is another place of dispute because its unclear if that's an appropriate venue. Other questions – what rules will govern disputes between two institutions in our community? What happened when the Oneida Appeals Commission and Oneida Business Committee are in a dispute like we are in today?

Right now, you are seeing President Bush using Executive Privilege and Executive Privilege at that level is not clearly defined. But he's claiming his people do not have to comply with the supeona of congress. I think the 12-20-06-J resolution is similar to that. The Business Committee has decided it does not have to comply with an Oneida Appeals Commission decision I disagreed with that stance because it creates a stand off then. I'm not sure who resolves that standoff. Who holds the Business Committee in check, who holds the Appeals Commission in check in that situation we just created.

I think rules clarifying that are necessary. We're also in a situation because our rules are not clear because we put the Appeals Commission in a place where, or the allegation is, that they're making policy from the bench, judicial policy making. That happens a lot, we see it all around us today. Bush v Gore example of policy making from the bench, where the rules, the situation is not clear.

Why is this a problem? Why are all those questions a problem? Because it creates more disputes. But I think it goes further to what Sharon House was saying, that we are in a breakdown and it's time that we get the tribal judicial code that we've been talking about for years completed and finished. Maybe that's part of the resolution today. That we firmly define who's going to do that and by when and put the resources to getting it done. Because you are right, I think, Owen said

disputes like this do more harm to our sovereign immunity than we did. The 12-20-06-J resolution came, I think there were good intentions on both sides.

I think both sides failed here. On the Business Committee side, I think we acted in a preemptive mode. That we didn't allow the Appeals Commission to pursue it. But I think because we didn't have answers to some of those questions, we reacted the way we did. So, not sure how to resolve this, not sure what's going to happen to the case in front of us. Maybe we need to consider some alternative dispute resolution. Maybe if that was considered earlier, to really look at that case, maybe we wouldn't be in a situation again today. But then I look at this to as an opportunity and I'm thankful for it actually because it's forcing us to pay attention to the need to develop our judicial processes.

**Mike**

Asked Vince Dela Rosa his opposition to the resolution.

**Vince Dela Rosa**

We should not interfere in judicial proceedings. We should let that case move forward, even though I understood the concerns of the committee, they had several concerns with how that case could unfold.

Smartest course of action, we have pieces ready to address all these matters. Obviously we didn't know this case was going to unfold as it has, the dispute between the two bodies. Many years ago, we starting working on the new judiciary. We have a new judiciary that's ready for your consideration. We sent it to Public Hearing, we've refined that draft, we have another one ready to go. It will address subject matter, jurisdiction, it will clarify content of cases. The other piece is the new APA. We have a new APA ready for your consideration via GTC. Those two pieces need to move forward, back before the Public Hearing process for your input at that process.

In regards to the case before us, I think that case needs to move forward. I don't know what's going to happen. We cannot interfere in cases at the judicial level. There's a separation for a purpose, GTC has structured it as such, they've given us very specific duties. I think the case needs to move forward, we need to be patient and let the APA and the new judiciary move forward. Those are my basic recommendations. I don't think we should affirm the resolution of 12-20-06-J. I opposed it then, I still oppose it now.

**Deb Ushaka**

Did anyone know when that resolution was passed? Information overload, everything is flying by too fast. I think this is a wake up call to pay attention and attend meetings. Public Hearings, I came to one, there were six people. In order to remain sovereign, we have to be there and help our Business Committee and Judicial system along to show we care.

**Don McLester**

Spoke of separation of the two bodies. If we are suppose to have separation between two committees, yet we have business people sitting on legislative side, I do not see

a separation. If we have questions of who has right or power in this body, it should come down to GTC. I'm not knowledgeable enough to say who's right or wrong, if we vote on either action today, I think we'd be doing what the Business Committee did, jumping the gun. If we made a vote to table this and that you come back with answers we need to make a decision on. We need to think about this.

I don't hear anything that's done for GTC, only employees. Where can you go to get help as GTC? There is no legal system set up for GTC. There is no legal set up for GTC to say the Business Committee is doing their job, Appeals is doing their job. They can turn to their attorneys or Appeals, who do we turn to? This was brought back up in 1986, 1989. We were suppose to set up a legal system for GTC, it was passed by GTC. It has never been worked on.

**Chair**

Said it would be appropriate to make a motion to end discussion, but there are two people who have been waiting to speak and asked assembly to allow them to speak.

**Bill Gollnick**

I've watched this evolve and move in the direction of separation of power. It's important to remember that separation of powers means that one body makes the laws and one body interprets the law. It's important to recognize that as we are talking about the issues now, I've worked in Legislative Affairs. In that capacity, I'd often say, it's a lot better to fight for Indians than with them.

I've always enjoyed being able to advocate for a particular position that Indian Country would like to see. I knew it would always be difficult when sitting down and hammering out what our position was going to be. But it's in that process that we bring resolution and come up with something that is stronger.

However, there is a serious question that's before the Business Committee and Appeals Commission. It's right the two bodies are here today before GTC to discuss the issues and help us understand. Many comments suggested that were advocating for a particular position or person or the individual rights of tribal members in this process. I encourage you to remember too that when we talk of the rights of individuals and as we move from an Appeals Commission whose responsibilities are primarily related to personnel issues in the appellate mode.

As we move out into a broader court with broader exercise of jurisdiction, we move in the position of one body that will be hearing issues of one tribal member against another tribal member, it's critical that we come forward with laws that are clear, consistent and understandable. Then we define our decisions based on those principals, not on who's related to who, which day it is or anything else. Spoke on the meaning of sovereign immunity and past case examples.

I see a desire to protect the sovereignty of the tribe and that's something everyone should be committed to. Sovereign immunity is government protecting sovereignty for all its members. I do support learning what it is, bringing back another

presentation, clarifying these issues so GTC is informed. We're making a big leap, an opportunity for growth, let's do it right.

**Chair** Asked GTC if Frank would be last speaker. There is one more hand raised.

**Frank** We have a lot of educated people here and we can listen to 75 different points of view. We're losing sight of this resolution. We're called here to work on this resolution and make a decision on this. I say we vote on it now and go home, we'll all be friends when it's over. Correct it and move forward.

**Chair** Suggested we call on last speaker and end discussion after that.

**Gordy McLester** How long has Business Committee been reviewing and working on this sequence of events? How long has the Appeals Commission been doing the same thing? Put together, how much time does that involve? GTC is no where near putting in that same amount of time.

Decisions elders made, put yourself in their position. Council had to make decision of a person who killed family and found him guilty. He stayed with his mother until he was hung. That's the kind of decision our bodies have had to make in the past. Today, it's becoming more complex. He would make his kids stand around a tree and hold hands until they resolved that issue.

That's an example. You are bodies and you take our direction. I'm hoping GTC will say, you go in that room and don't come out until it's resolved and then bring it back to GTC. This nation is one of the best in the United States, but that doesn't mean we don't have faults.

**Chair** Someone made possible motion to table, a date would be needed to incorporated in that motion, if that motion is coming forward.

**Winnifred Thomas** Motion by Winnifred Thomas to revoke Oneida Business Committee resolution of 12-20-06-J, thereby requiring all appropriate parties to participate in all future proceedings, and the enforcement of all decisions, opinions and rulings rendered by the Oneida Appeals Commission, seconded by Mike Nebraska.

## **Discussion**

**Sherrole Benton** I agree completely with Sharon House. I believe that the Appeals Commission cannot hear the particular case we are discussing here today. And the fact that the head of the Appeals Commission made this motion is also another conflict of interest in my opinion. I would support Mr. McLester's motion if he would make that today, thank you.

**Chair** Right now, the motion is what Winifred has moved on.

**Jennifer Hill-Kelley** With the motion on the floor, I just want some clarity about what would be the impact following the GTC affirming that motion and what would be the impact if we denied the motion?

**Chair** The impact affirming what was moved upon would rescind the resolution the Business Committee passed in 12-20-06-J. In which case then that particular case would continue to move forward in the appeals process.

Call for the question.

If there are no objections, the Election Board is ready, we'll take a hand vote on this motion.

**Vote** Motion by Winifred Thomas to revoke Business Committee resolution of 12-20-06-J, thereby requiring all appropriate parties to participate in all future proceedings, and enforcement of all decisions, opinions and rulings rendered by the Oneida Appeals Commission, seconded by Mike Nebraska. For: 92, Opposed: 36, Abstained: 7. Motion carried.

**Recess/Adjourn** Motion by Pearl McLester to adjourn, seconded by Donald Davids. Motion carried.