

# ONEIDA JUDICIARY

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## TRIAL COURT

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**Oneida Nation / Oneida Police Department**  
**Petitioners,**

v.

**CASE NO: 23-CT-048, 23-CT-049**

**DATE: May 16, 2023**

**Nelson W. Ninham,**  
**Defendant,**

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## ORDER

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This case has come before the Oneida Trial Court, Honorable John E. Powless, III presiding.

*Appearing In-Person:* Attorney Kelly McAndrews, representing the Petitioners; Defendant Nelson W. Ninham and Melinda J. Danforth.

### **Background**

In accordance with 3 O.C. 304.6 and 304.10, Domestic Animal Law, Defendant was cited for *Animal Running at Large, 1<sup>st</sup> Offense* and *Possessing a Dangerous Animal, 1<sup>st</sup> Offense*, resulting in a *Determination of Dangerousness*. Citations and Determination of Dangerousness are for a black German Shepherd named "Diamond". Citations 23-CT-048 and 23-CT-049 do not require Defendant to appear, but the Determination of Dangerous is a mandatory appearance. A hearing on the citations and Determination of Dangerousness was held on May 15, 2023. At the hearing, the parties proposed a stipulation and agreement for the Court to consider.

### **Principles of Law**

#### **Title 8. Domestic Animals – Chapter 304**

#### **304.6. Dogs and Cats**

304.6-4. *Running at Large*. An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

(a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.

(b) When an Oneida Police Officer or Oneida Conservation Warden finds a dog or cat running at large, the officer and/or warden shall, if possible, pick up and impound such

animal.

(c) Whenever any impounded animal bears an identification mark, such as a collar with identification tags or license tag, the owner shall be notified as soon as reasonably possible.

### **304.10. Dangerous Animals**

304.10-1. *Dangerous Animals*. No person shall own, keep, possess, return to or harbor a dangerous animal. An animal shall be presumed to be dangerous if the animal:

- (a) approaches or chases a human being or domestic animal in a menacing fashion or apparent attitude of attack;
- (b) bites, inflicts injury, attacks, or otherwise endangers the safety of a human being or domestic animal;
- (c) is suspected to be owned, trained or harbored for the purpose of dog fighting; and/or
- (d) has been declared to be a dangerous animal and/or ordered to be destroyed in any other jurisdiction.

304.10-2. *Dangerous Animal Determination*. An Oneida Police Officer or Oneida Conservation Warden may determine an animal to be dangerous whenever, upon investigation, the officer finds that the animal meets the definition of dangerous animal provided in section 304.10-1.

- (a) Upon making a determination that an animal is dangerous, the Oneida Police Officer or Oneida Conservation Warden shall issue a written order with an accompanying citation declaring the animal to be dangerous.
- (b) The citation and order shall be personally delivered to the apparent owner or custodian of the dangerous animal.
- (c) Upon receipt of the written order and accompanying citation the owner shall remove the dangerous animal from the Reservation within three (3) business days

304.10-3. *Contesting a Dangerous Animal Determination*. If the owner wishes to contest the dangerous animal determination, he or she shall file with the Trial Court a written objection to the order within three (3) business days of receipt of the order.

(a) The written objection shall include specific reasons for objecting to or contesting the order. An owner may argue an animal should not be deemed dangerous due to the animal biting, attacking or menacing any person and/or domestic animal because the animal was acting to:

- (1) defend its owner or another person from an attack by a person or animal;
- (2) protect its young or another animal;
- (3) defend itself against any person or animal which has tormented, assaulted or abused it; and/or
- (4) defend its owner's property against trespassers.

(b) Pending the outcome of the hearing, the animal shall be securely confined in a

humane manner either on the premises of the owner or caretaker, or with a licensed veterinarian. If confined on the premises of the owner or caretaker, the following requirements shall apply:

(1) Leash and Muzzle. No owner shall permit a dangerous animal to go outside its kennel or pen unless the animal is securely restrained with a leash no longer than four feet (4') in length by a person who is at least sixteen (16) years of age who is in physical control of the leash, competent to govern the animal and capable of physically controlling and restraining the animal. The owner shall not leash an animal to inanimate objects such as a tree, post, or building. When the animal is on a leash outside the animal's kennel, the owner shall muzzle the animal in a humane way by a commercially available muzzling device sufficient to prevent the animal from biting a person or other animal.

(2) Confinement. Except when leashed and muzzled the owner shall ensure the dangerous animal is securely confined indoors or in a securely enclosed and locked pen or kennel that is located on the premises of the owner and constructed in a manner that does not allow the animal to exit the pen or kennel on its own volition. The owner shall not permit an animal to be kept on a porch, patio, or in any part of a house or structure on the premises of the owner that would allow the animal to exit the building on its own volition. The owner shall not permit the animal to be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(3) Signs. The owner of a dangerous animal shall display, in prominent places on his or her premises near all entrances to the premises, signs in letters of not less than two inches (2") high warning that there is a dangerous animal on the property. A similar sign shall be posted on the kennel or pen of the animal. In addition, the owner shall conspicuously display a sign with a symbol warning children of the presence of a dangerous animal.

(4) Notification. The owner of a dangerous animal shall notify the Oneida Police Department and/or the Oneida Conservation Department immediately if the animal is at large, is unconfined, has attacked another animal, or has attacked a person.

(c) If an owner or caretaker fails to follow the requirements for harboring a dangerous animal pending a hearing, the animal may be impounded by the Oneida Police Officer or Oneida Conservation Warden issuing the dangerous animal determination.

304.10-4. *Dangerous Animal Determination Hearing.* A hearing on the dangerous animal determination shall be held within fourteen (14) days of submission of the written objection with the Trial Court. At the hearing, the Trial Court shall determine whether the determination that the animal is dangerous should be substantiated.

(a) If the Trial Court concludes that the determination that the animal is dangerous is substantiated, then the Trial Court shall issue an order that mandates the animal be removed from the Reservation within forty-eight (48) hours of the determination.

(1) The order shall contain the requirement that the owner notify the Oneida

Police Department within twenty-four (24) hours if the dangerous animal has been sold or been given away. If the dangerous animal has been sold or given away, the owner shall also provide the name, address and telephone number of the new owner of the dangerous animal. If the dangerous animal is sold or given away to a person residing outside the Reservation or to a person or entity that falls outside of the jurisdiction of this law, the owner shall present evidence to the Oneida Police Department showing that he or she has notified the police department or other law enforcement agency of the animal's new residence, including the name, address and telephone number of the new owner. The Oneida Police Department shall forward all such notifications to the Environmental, Health, Safety, and Land Division within a reasonable amount of time.

(b) The Trial Court may order a dangerous animal to be destroyed. If such an order is issued, the Trial Court shall require the owner submit proof of destruction within five (5) business days from a licensed veterinarian. If the owner does not satisfy these requirements, an Oneida Police Officer and/or an Oneida Conservation Warden shall seize the animal and enforce compliance at the cost of the owner.

(c) The Trial Court may mandate attendance at an additional Trial Court hearing if restitution is appropriate.

### **Analysis**

In accordance with 3 O.C. 304.6 and 304.10, Defendant was cited for Animal Running at Large, Possessing a Dangerous Animal and a Determination of Dangerousness. The Domestic Animal Ordinance allows for an owner to appeal the Determination of Dangerousness within (3) three days from receiving the determination, as a result, the Trial Court shall hold a hearing on this matter within (14) fourteen days from Defendant filing his or her appeal to the Court. Here, the Defendant filed an appeal to the Trial Court, the Court proceeded to schedule a hearing on the Determination of Dangerousness within the time frame identified in the Domestic Animal Ordinance.

At the hearing, the parties proposed to dismiss the Determination of Dangerousness and Possessing a Dangerous Animal, 1<sup>st</sup> Offense. Additionally, the parties agreed to Animal Running at Large, 1<sup>st</sup> Offense which carries a \$75.00 fine and \$25.00 in court costs and restitution in the amount of \$105.00 to Mr. Cooper both payable within (30) days from the date of this order. The Court finds this stipulation and agreement favorable.

### **Findings of Facts**

The Court finds as follows:

1. The Court has subject matter and personal jurisdiction over this matter.
2. All entitled to notice received notice.
3. At the hearing, the Defendant acknowledged his rights.
4. On May 3, 2023, the Oneida Police Department cited Defendant with the following

citations and determination.

- a. 23-CT-049; Animal Running at Large, 1<sup>st</sup> Offense
  - b. 23-CT-048; Possessing a Dangerous Animal, 1<sup>st</sup> Offense.
  - c. Determination of Dangerousness.
5. Defendant's dog is a black German Shepherd named "Diamond".
  6. During the Determination of Dangerousness hearing, the parties presented a stipulation and agreement for the Court's consideration for Citations and Determination of Dangerousness.
  7. The Defendant provided proof of payment for invisible fencing at his residence and will start the installation process on May 25, 2023.
  8. The Court approved the parties' stipulation and agreement.

**Order**

1. The Court accepts and approves the agreement of the parties as described below:


- a. 23-CT-049; *Animal Running at Large*, 1<sup>st</sup> Offense; 304.6-4.

<b>Fine:</b>	<b>\$75.00</b>
<b>Court Costs:</b>	<b><u>\$25.00</u></b>
<b>Amount owed by Defendant:</b>	<b>\$100.00</b>

- b. The \$100.00 fine shall be paid to the Oneida Judiciary within (30) thirty days from the date of this order. For any questions regarding payment, contact the Oneida Judiciary Trial Court Clerk at (920) 496-7200.
- c. Defendant shall pay \$105.00 in restitution to Mr. Cooper within (30) thirty days from the date of this order.
  - i. Defendant provided proof of \$105.00 restitution payment on May 15, 2023.
- d. 304.10-1, Possessing a Dangerous Animal, 1<sup>st</sup> Offense violation is DISMISSED.
- e. Determination of Dangerousness for "Diamond" is DISMISSED.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council this order is signed on May 16, 2023.

  
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John E. Powless III, Trial Court Judge