

**Oneida Tribe of Indians of Wisconsin  
Legislative Reference Office**

Lynn A. Franzmeier, Staff Attorney  
Taniquele J. Thurner, Legislative Analyst  
Candice E. Skenandore, Legislative Analyst



P.O. Box 365  
Oneida, WI 54155  
(920) 869-4376  
(800) 236-2214

<https://oneida-nsn.gov/Laws>

**Memorandum**

**TO:** Legislative Operating Committee  
**FROM:** Douglass A. McIntyre, Staff Attorney  
Candice E. Skenandore, Legislative Analyst  
**DATE:** May 20, 2015  
**RE:** Removal Law Amendments: Public Meeting Comment Review

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On April 30, 2015, a public meeting was held regarding proposed amendments to the Removal Law (Law). Amendments to the Law include:

- Remove language that states that investigative leaves do not apply to investigations regarding appeals of disciplinary actions or employee complaint investigations.
- Reduce how long an employee can be placed on investigative leave, this timeframe has been reduced from 30 calendar days to 15 calendar days.
- Reduce how long an employee's investigative leave can be extended, this timeframe has been reduced from 30 calendar days to 15 calendar days.
- Require the employee's supervisor to notify the employee when to return to work and/or the disciplinary action that will be taken.
- Amend the appeal process, only allowing the employee to appeal a disciplinary action that arises from and investigation.

This memorandum is submitted as a review of the oral comments received during the public meeting process; no written comments were received. The public meeting draft with comments, as well as the comments received, have been attached for your review.

**Comment 1. Removal of Elected Official.**

From line 34-35 of the analysis: The final vote on whether to remove an elected Official would be made by the OBC, instead of the GTC.

**Mike Debraska:** Oh, also, just one last... or two last quick points. I looked at line 34 of the Removal Law, actually lines 34 and 35 it says "the final vote on whether to remove an elected official will be made by the OBC instead of GTC, I think that's extremely dangerous as well. I think that an elected official, and again, the reason why I state that is let's say as a GTC member I've got a problem with what is happening or not happening in a certain manner and I file a complaint...shouldn't that then come to GTC so GTC can make a determination rather than just the Business Committee? Or let's say the Business Committee makes a determination and finds against ... do I then need to bring a petition? To say hey, I need to get this addressed because I don't agree with you guys. I think that kind of, to me, again, that smacks of our constitutional rights, or some of our constitutional rights being abridged.

*Response*

The proposed amendments to the current Removal Law require a majority of GTC support to pass the legislation. There are no recommended changes based on this comment.

**Comment 2. Policy.**

4.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide an orderly and fair process for the removal of persons elected to serve on the Oneida Business Committee and on boards, committees and commissions.

**Brian Doxtator:** 4.1-2: “orderly and fair” - according to a legal definition is “arranged to dispose in some order or pattern governed by law” – nowhere in the Law does it talk about timeliness of removals or efficiency. We need, an obvious timeline somewhere in there.

*Response*

The commenter correctly indicates that there is no timeline contained in Section 4.1-2 and no overarching timeline within the proposed amendments. There are several specific time requirements in 4.5-4(a), 4.6-1, 4.7-3, 4.8-1 and require “prompt” action in 4.5-4 and 4.5-6. If LOC wishes to have a more specific time requirement in place, the best location would be in section 4.5-4 and 4.5-6 replacing “promptly” with a specific time.

**Comment 3. Authority to Amend and Repeal.**

4.2-2. This Law may be amended or repealed by the General Tribal Council only pursuant to the procedures set out in the Legislative Procedures Act.

**Mike Debraska:** 4.2-2. It says “The law may be amended or repealed by the General Tribal Council only, only pursuant to the procedures set out in the Legislative Procedures Act. I think a portion of that needs to be taken out, to just reflect that “This law may be amended or repealed by the General Tribal Council,” period. I get real, real concerned when our ability is limited. It stifles us and it stifles GTC to say “oh, we have to follow this procedure. We know when something is going wrong and something is not working and somebody is not doing what they’re supposed to be doing, GTC becomes the supreme governing authority and should just be able to say “that’s it. We’re going to take you out. So I think that needs to be amended.

*Response*

The Legislative Procedures Act was adopted by the General Tribal Council in resolution GTC #01-07-13-A to ensure that there is a standard process followed in the creation of new laws. The language in 4.2-2 should be changed to the following to conform with Section 16.11-1(b) of the Legislative Procedures Act:

4.2-2. This Law may be amended or repealed by the Oneida General Tribal Council only pursuant to the procedures set out in the Legislative Procedures Act.

**Comment 4. Repeal.**

4.2-4. ~~All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically~~

~~re enacted after adoption of this law. Specifically, the following resolutions are repealed by this law.~~ In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control. Provided that, this Law repeals the following:

- (a) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members)
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance)
- (c) BC-1-03-96-B (BC Adoption of Removal Law)
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law)

**Mike Debraska:** Additionally, I looked at the laws that are going to be repealed. And that's at 4.2-4, also, I noticed that several GTC resolutions and two BC resolutions would also be replaced. One of my questions to you is, or a question I have in general, is did GTC approve of the Legislative Procedures Act? And if so, when? Because I don't ever recall GTC approving that. So, I look at that and I say there's something serious with that because that needs to be taken a look at as well as the removal ordinance. And the removal ordinance is cited several times in the Comprehensive Policy Governing Boards, Committees and Commissions, but yet that's not stated in here as being repealed. I don't know if the Business Committee is looking at bringing that in but if it is, that's certainly something that needs to be governed around this as well, because it does state in that policy, the Comprehensive Policy Governing Boards, Committees and Commissions, what are the things that would govern that removal. Additionally I do want to know in particular, why these particular pieces of legislation are being replaced? Those four that were mentioned at 4.2-4. I think that really needs to be clarified and brought back to GTC so that we can see specifically what it is that's being replaced. Thank you.

**Brandon Stevens:** So you would like those pieces of legislation to be within the presentation? Like as far as, what we're trying to accomplish in updating, I guess the relevancy to the Removal Law? As far as information? Because this is all going to GTC.

**Mike Debraska:** I'm sorry, I missed that last point.

**Brandon Stevens:** Because this is all going to GTC. Are you saying you want those pieces of legislation within the presentation, I guess, to show the relevancy in the Removal Law? Okay.

**Mike Debraska:** Exactly, because I want to know what's being replaced with what. And I think if GTC doesn't have that, again, I look at this and think, once again, I am being asked to make an informed decision on less than all the accurate information because if I don't know what's being replaced with what, then I am doing more legwork to find out what's really going on here. What did they replace, what didn't they replace, what's happening, what's not happening?

**Brandon Stevens:** Ok. So from here, we'll take this back, the LOC will look at all the public hearing comments and there will be more, I guess kicks at the cat with this legislation to see, okay, are we clarifying anything that you have questions on. And so, there'll be about three more, I believe, three more chances so we can get this cleared up with you and if any more questions arise, we'll make sure those questions can be answered, and it'll help us have a better presentation to General Tribal Council when it comes forward. And the one question that you did ask, was when was the Legislative Procedures Act adopted by General Tribal Council and that would be January 7, 2013.

**Mike Debraska:** Thank you.

*Response*

The proposed changes update the language used in Section 4.2-4 to comply with Section 16.11-1(d) of the Legislative Procedures Act. The four listed ordinances and laws (listed below) have already been repealed. There are no changes recommended based on this comment.

- (a) GTC-6-13-79 (Adoption of Ordinance for the Removal of Oneida Tribal Business Committee Members);
- (b) BC-3-8-85-A (Adoption of Legislatively Appointed Committee Removal Ordinance);
- (c) BC-1-03-96-B (BC Adoption of Removal Law), and
- (d) GTC-1-17-98-A (GTC Adoption of Removal Law).

#### **Comment 5. Elected Official Definition.**

(b) “Elected official” means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee.

**Mike Debraska:** And then the last... under the definitions under 4.3-1 under subsection (b) where it talks about “Elected official” means any person elected to a position on a board, committee or commission of the Oneida Tribe of Indians of Wisconsin and does not include the Oneida Business Committee. If the BC aren’t elected officials, what are they?

**Brandon Stevens:** Okay, we’ll clarify that, because I know why we did that, it’s the purpose of this Law, because the Removal Law actually specifically mentions the Business Committee members. But we’ll clarify that, because it does seem a little out there; every law that says that it excludes Business Committee members always raises the question of “what about the Business Committee members?” So we’ll figure that one out and how to... yeah, it’s a two part thing, but we’ll explain that a little bit better.

#### *Response*

The intent of the proposed amendments is to provide a new removal process for elected officials, including the Business Committee. The Business Committee is left out of the definition because elected officials have their final determination made by the Business Committee. To avoid having the Business Committee handle a determination of one of its own members internally, a final determination is made by the General Tribal Council. There are no changes recommended based on this comment.

#### **Comment 6. Judiciary Definition.**

(c) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC—#1-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

**Bradley Graham:** That would be under definitions, that would be including the BC, to take it out of the Judiciary was the other one I had.

#### *Response*

There are no recommended changes based on this comment.

#### **Comments 7 & 8. Grounds for Removal-OBC.**

4.4-1. Oneida Business Committee. A member of the Oneida Business Committee may be removed from office for any of the following reasons:

- (a) failure to attend four (4) regularly scheduled meetings without a written explanation;
- (b) intentional mis-use of Tribal funds;
- (c) alcohol use while performing official responsibilities or use of illegal drugs at any time;
- (d) if he or she no longer meets the qualifications for office;
- (e) violating a Tribal law which specifies removal as a penalty; or
- (f) felony conviction while in office.

**Brian Doxtator:** Grounds for removal: 4.4(e). “(e)” needs to be removed. There’s only one law, actually two now, but ... one law, which allows for removal. The Code of Ethics. <twaliw@eh states that enforcement, this code will be enforced according to the following government officials may be subject to removal if elected or termination . . . anyway, the sentence structure in that basically says that you can only be removed if a law says you can be removed for violating the law. And there’s only really one major law - Conflict of Interest has it - but it’s the Code of Ethics. So the only way you can remove an official for violating the Law is in alignment with what the Code of Ethics says. I really strongly recommend that the sentence either is restated to “in violation of all laws, GTC resolutions and BC resolutions,” even though we see resolutions as law. In theory, an elected official could violate personnel policies and procedures, their oath, GTC resolutions, GTC directive, and there’s nothing that gives enough to remove that.

*Response*

The commenter wants Section 4.4-1(e) amended to read:

(e) violating any Tribal laws, General Tribal Council resolutions or Oneida Business Committee resolutions; or

Changes based on the comment are a policy decision best left to the discretion of the LOC.

**Mike Debraska:** Additionally I looked at the grounds for removal under 4.4 and some of these, I have some concerns with. Particularly (d), (e) and (f). What are the qualifications for office? I look at that and I say, that’s kind of a blanket statement to me, it doesn’t really mean anything.

*Response*

The qualifications for elected officials can be found in Section 2.5 of the Oneida Election Law and other specific requirements and/or exceptions are set out in adopted by-laws or other documents. The minimum requirements are listed in Section 2.5-2 are listed below. There are no recommended changes based on this comment.

- (a) be an enrolled Tribal member, as verified by membership rolls of the Tribe.
- (b) be a qualified voter on the day of the election.
- (c) provide proof of physical residency as required for the position for which they have been nominated or for which they have petitioned. Proof of residency may be through one (1) or more of the following:
  - (1) a valid Wisconsin driver's license;
  - (2) a bill or pay check stub showing name and physical address of the candidate from the prior or current month;

(3) another form of proof that identifies the candidate and that the candidate has physically resided at the address and identifies that address as the primary residence.

**Comment 9 & 10. Grounds for Removal-Elected Office.**

4.4-2. Elected Official. An elected official may be removed from office for any of the following reasons:

- (a) failure to attend four (4) regularly scheduled meetings without a written explanation;
- (b) failure to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason ~~provided that this subsection shall not apply to the Oneida Business Committee;~~
- (c) violation of the by-laws, operating agreements, laws, regulations or Standard Operating Procedures of the board, committee or commission;
- (d) intentional mis-use of Tribal funds;
- ~~(e)~~ alcohol use while performing official responsibilities or use of illegal drugs at any time;
- ~~(e)~~ if he or she no longer meets the qualifications for office;
- ~~(f)~~ violating a Tribal law which specifies removal as a penalty; or
- ~~(g)~~ felony conviction while in office.

**Mike Debraska:** Just commenting on what Brad eluded there, as well, under 4.4-2 "elected official" I noticed that on section (b) it says "failure to attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve month period for any reason" which isn't under the Business Committee under 4.4-1. And I think I believe it should be. I think if a BC member's elected here, if you are not going to attend the meetings, what function are you serving? Because it certainly isn't for the people.

*Response*

The commenter correctly indicates that the requirement on elected officials in Section 4.4-2(b) to "attend fifty percent (50%) of an entity's regular scheduled meetings within a twelve (12) month period for any reason" is not present for OBC Members in the corresponding Section 4.4-1. Changes based on the comment are a policy decision best left to the discretion of the LOC.

**Mike Debraska:** The other one is violating a Tribal law, which Brian already touched upon, and the last one is (f) Felony conviction while in office. I think a felony conviction prior to office should also be in there. I don't believe anybody should be in a position of power if they've got felonies on their record. And there's nothing that would stop that, according to this. So I think that becomes a major issue.

**Bradley Graham:** While going through this again, I see under 4.4-2... you have felony conviction while in office, that should be felony conviction before or while in office. I mean, there should be a personal background investigation.

*Response*

The commenters correctly indicate that the proposed legislation does not allow for removal for a felony committed prior to taking office. However the proposed legislation concerns conduct of the OBC and elected officials while in office. A more appropriate amendment for this comment

would be in the Oneida Election Law. There are no recommended changes to the Law based on these comments.

### **Comments 11. Limitation on Number of Removals**

4.5-1. Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an ~~elected official~~ Oneida Business Committee member. No petition shall request the removal of more than one (1) ~~elected official~~ Oneida Business Committee member.

**Bradley Graham:** And you also have in there that “no petition should request the removal of more than one” - that should be taken out. You got three, four Business Committee members – or any officials, they shouldn’t be done one at a time. You should be able to bring 2, 3, 4, or the whole works, for a removal. So I’d like to see that taken out too. That’s pretty much it that I noticed.

#### *Response*

The comment wishes to allow more than one OBC member to be on a single petition under the legislation. The proposed legislation does not prohibit a person from seeking multiple petitions at the same time. Additionally requiring only one individual per petition avoids potential issues under 4.10-3(a) challenging the authenticity of a signature to each recalled individual. There are no changes recommended based on this comment. If changes are made based on this comment then 4.9-3 should also be amended.

### **Comment 12. Limitation on Number of Words in a Petition.**

[4.5-1] The petition shall state with particularity the facts upon which it is based and the specific grounds for removal, in not more than two hundred (200) words,

**Brian Doxtator:** 4.5: Petition. 200 words needs to be removed, we need to focus more on the facts and not the, granted you don’t want a dissertation, you don’t want a 17 page dissertation, but 200 words is not, it’s almost undoable to be able to succinctly explain why and what. And so, I think the law needs to be more focused on the facts and not 200 words.

**Bradley Graham:** You’ll have to excuse me, I didn’t have this right away to go through it, but one of the things I agree with like Brian said, is that 200 word deal.

#### *Response*

The commenter correctly points out that Section 4.5-1 currently has a limitation of two hundred (200) words on a petition. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-3 should also be amended.

### **Comment 13. Require Number of Voters.**

[4.5-1] . . . and must be signed by fifty (50) or more eligible voters or a number equal to at least thirty (30) percent of the votes cast in the previous general election, whichever is greater.

**Brian Doxtator:** Take out the 50 eligible voters, it has no value. I know it’s in the Constitution but that’s more about calling a GTC meeting. It adds no value to the process.

**Mike Debraska:** Additionally, I looked at some of this stuff, here the 50 voters, which Brian already touched upon, this kind of... reflecting here...

*Response*

This comment wishes to remove the minimum fifty (50) eligible voter requirement for petitions. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-3 should also be amended.

**Comment 14. 30-day Timeline.**

4.5-2. The petition shall be filed within thirty (30) days after the date the first signature is obtained on the petition.

**Brian Doxtator:** Petitions shall be filed within 30 days once you start acquiring signatures: based upon my experience, you have got to educate, you have to do a lot of things. And 30 days is not enough time. I'm recommending to at least 60 to provide more time, because it's not just going to get signatures, you're actually talking, visiting with people. You're looking at a half hour, 45 minutes per person; when you meet the threshold of how many signatures you need, it's just not doable.

**Bradley Graham:** The 30-day filing, that's basically the same as it was, but like I said, all elected positions should be the same. Nobody should be separated. Because the people are the ones electing you in ... and it doesn't matter what board, committee or commission.

*Response*

The commenter correctly indicates that the timeline under Section 4.5-2 of there is a thirty (30) day filing requirement from the date of the first signature. This mirrors the timeline under the current Removal Law Section 4.5-2. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-1 (a) should also be amended.

**Comment 15. Petition Content Requirements.**

4.5-3. The petition shall contain, in ink:

(a) The appropriate lines for the eligible voter's:

- (1) Printed name;
- (2) Signature;
- (3) Street address; and
- (4) Enrollment number.

(b) An oath verifying the fact that:

- (1) The circulator witnessed each person sign the petition;
- (2) Each signature appearing thereon is the genuine signature of the person it purports to be; and
- (3) The petition was signed in the presence of the witness on the date indicated.

**Brain Doxtator:** 4.5-3(a) and (b): this section is more administrative, not law. Either remove, replace sentence structure; mandating "the Secretary's Office shall create a process for removal petitions." And just take out that whole, "you need your name, address..." whatever that is. That's just administrative, it's not a law thing.

*Response*

The commenter wants Section 4.5-3 removed and the petition requirements left to the discretion of Secretary's Office. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.9-3 (a) should also be amended.

**Comments 16. Preliminary Review-OBC**

**Brian Doxtator:** And I do have issue with "elected officials do not have" ...I don't ... elected officials don't have the same rights as citizens and if they truly violate the Law and it's something administratively ... process is not adhered to, then it's, then it's done. And yet, the elected official still could have violated the law. And I'm not saying we should violate their due process, but I think a little bit more... elasticity around this issue?

**Bradley Graham:** I'd say take the Judiciary out completely. It should be like it always has been – people get a petition, it was present it, the names are verified, and the process went through GTC. Judiciary should not be involved in this. At all. Completely. It should be up to General Tribal Council for removal for all elected positions. That includes the Business Committee. Appointed positions are done by the Business Committee. Youse guys take care of that. The elected positions are done by the people for the people. And they are the ones who should handle the removals. Whether it takes one meeting or two meetings, it doesn't matter.

*Response*

The intent behind the proposed Amendments is to change the current removal process. There are no changes recommended based on this comment. If changes are made based on these comments then 4.10 should also be amended.

**Comment 17. Preliminary Review Timeframe.**

4.6-1. The Judiciary, upon receipt of the petition shall schedule a preliminary review, to take place within twenty (20) calendar days, to determine whether the allegations set forth in the petition would constitute sufficient grounds for removal.

**Brian Doxtator:** 4.6: preliminary review; 20 calendar days. Process is not efficient. I'm just saying, preliminary review, 20 calendar days, it's not efficient.

*Response*

The commenter correctly indicates that the timeline under Section 4.6-1 of the proposed legislation sets a twenty (20) day requirement for holding a preliminary review. This mirrors the timeline under the current Removal Law Section 4.6-1. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.10-1 should also be amended

**Comment 18. Signatures Reviewed by Judiciary.**

4.6-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition may be reviewed by the Judiciary upon motion of the ~~elected official~~ Oneida Business Committee member whose removal is sought. The motion shall be filed within

twenty (20) calendar days of service of the certified copy of the petition upon the ~~elected official~~ Oneida Business Committee member sought to be removed. The motion shall be in writing and the grounds limited to:

- (a) the authenticity of the signatures; and
- (b) whether the signature is that of an eligible voter.

**Brian Doxtator:** 4.6-3: adds no value to the removal process.

#### *Response*

The commenter wishes to have Section 4.6-3 removed. The Section provides an added step specifically allowing an OBC member, and an elected official in the corresponding 4.10-3, to challenge the signatures separate from the Preliminary Review and Hearing. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on these comments then 4.10-3 should also be amended.

#### **Comment 19. Hearing-OBC**

**Brian Doxtator:** 4.7: Hearing. Language needs to be re-worded to support the concept that they either validated the information is valid or the information/data is invalid. When you have a hearing, it's almost like, you're at a court hearing, trying to... argue against and for. And the way the law is written, it should be more about the hearing is to validate that yes you have the facts, yes these are the validated facts, and yes this goes to General Tribal Council. No, you don't have facts? It's not validated, it's not true; we're not sending it to General Tribal Council. This is whatever... hearsay or rumors, or whatever. But to have an actual hearing and then you send it to General Tribal Council? That's ridiculous.

**Ed Delgado:** So that's my comments. But mainly I came here to just talk about added charges on the day of trial. That's totally unthinkable. But the other ones are important too. But I don't support going back to the old way where an investigative body interviews and studies the facts – but they're totally political, and they're not judges and judicial hearing bodies, and even though I spoke against the Judiciary on this, at least it was a hearing. You could present your side and they had to prove what they said if they did not prove it. Yaw^ko.

#### *Response*

Section 4.7 preserves the due process of the official facing removal by providing a hearing in which parties can present evidence, question and cross-examine witnesses and ensure that the rights of the accused are protected as provided in Article III, Section 3 of the Oneida Constitution. There are no changes recommended based on this comment. If changes are made based on these comments then 4.11 may also need to be amended.

#### **Comments 20. Rights of OBC Members at Hearings.**

4.7-1. *Rights of ~~Elected Official~~ Oneida Business Committee Member at Hearing.* An ~~elected official~~ Oneida Business Committee member whose removal is sought shall have the right to present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at his or her expense, be represented by counsel of his or her choice.

**Ed Delgado:** I know you left pretty much intact the removal of a BC member, but, and I covered this before with the old OBC, under the preliminary hearing, it restricts that the

discussions can only be on the allegations in the petition. But it doesn't say, when you have your hearing, it doesn't protect the accused from being, from new charges being added on the day of the hearing. I know it's unthinkable that maybe you didn't put it in here, because who would think that you could do that? But in my removal, the day of the hearing, new charges were added. And my attorney said "how do you expect me to defend my client when I had no chance to study those allegations, or to bring witnesses, or create an argument against those allegations?" And the response of the Judiciary was, "it'll be all right, don't worry about it." Well, I think since that's part of our history now, as a removal hearing, it was allowed once. Unless you want it to happen again, I think you need to provide that you can't add allegations on the day of the hearing. New charges. It's like you're on trial for bank robbery and on the day of your trial you're charged with... murder or something. It's just unthinkable. Anywhere. And we shouldn't allow it here. And it happened, so we need to remedy it with mentioning it in the Removal Law under hearings.

**Ed Delgado:** *written*-It would also like to submit written testimony recommending that once the hearing begins whereby the petitioner has to prove his allegations, that no additional charges can be added. In the most recent Removal attempt, the court (Oneida Appeals Commission) added an additional charge on the day of the hearing. The charge was in no way part of any petition submitted to the Tribal Secretary's Office and the defendant had no opportunity to prepare a defense. Unthinkable behavior for any court, but it happened here on our Reservation and by our court of that time. As improper as it was, I believe that the OBC has the responsibility to insure that such court behavior does not happen again by prohibiting it in the amended law.

#### *Response*

The commenter expresses concern of new allegations being added late in the proceeding. However, Section 4.5-1 provides that a petition may not be amendment after it is filed with the Tribal Secretary. The language used in 4.7-3 *Findings* limits a judge to the "determine whether each allegation of the petition has been proven ... and such allegations constitute sufficient grounds for removal..." No changes are recommended based on this comment.

**Ed Delgado:** But, speaking for the person being removed. It's a great expense. It could be. You're going to have to have a lawyer there, and that could cost you thousands. I know one removal, my removal – three days of hearings. Very, very expensive proposition.

**Ed Delgado:** Mainly the main questions on those were that: who is going to cover the cost of the .... "I know it says at your own cost", but what if those allegations fail? What if they're a bunch of lies? You still paid the \$3000 ... there should be a way whereby the accuser is responsible. Or else they can just go out there and make the allegations, you can be shown to be not guilty of the things and you still have to pay the costs. The accuser should be responsible, and if he can't prove those allegations? He or she should be responsible for those court costs, and the attorney fees.

#### *Response*

The commenter expresses concern over the cost of legal representation in the event the allegations fail and the individual is not removed. Changes based on the comment are a policy decision best left to the discretion of the LOC.

**Comment 21. Burden of Proof.**

4.7-2. *Burden of Proof.* A person seeking the removal of an ~~elected official~~ Oneida Business Committee member shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

**Brian Doxtator:** Burden of proof. Clear and convincing evidence is a medium level of burden of proof which is a more rigorous standard of proof to meet than the preponderance of evidence standard. So if you have facts, I really think the law should get away from clear and convincing evidence and it should be the preponderance of evidence – it is less rigorous and so forth.

**Mike Debraska:** And again, he touched on this as well, the burden of proof. I really think that needs to be clarified a little bit better. Burden of proof.

**Ed Delgado:** I'd like to comment on a couple more things being said here today. I think I already said that under the old process, before the Removal [law] was passed, the Removal [law] of 1981 or something, General Tribal Council, after receiving the petition, organized an investigative body who acted somewhat like a... to gather facts. Well, those are highly political and not a judicial body. Anyone accused of a very... of crimes against their tribe, or their nation, they should prove it. And they should prove it by clear and convincing evidence, not a preponderance of the evidence; that means you can have a lot of evidence there, half of it could be lies, or all of it could be lies, but at least you've got a big old case there. It's not asking too much to, when you're going to take away the people's vote, and remove an elected person that...

*[his phone rings]*

...hmmm. Some things never change.

*[laughter]*

... that they prove that you did it. Prove it with clear and convincing evidence that you did those things.

**Ed Delgado:** *written*-regarding comments regarding Amendments on Removal Law which would lower the burden of proof from the current "Proof by Clear and Convincing Evidence," I do not agree that the standard should lowered to a standard of proof by a "Preponderance of the Evidence." Not only is a removal of an elected official too important an issue to have him/her adjudged such an by a lower standard, but it gives the appearance that the newly elected Oneida Business Committee has an agenda to remove someone of its members. Also, what's wrong with the current standard of having to prove a petitioner's allegations with clear and convincing evidence. It is only reasonable that when someone makes allegations against another human being, that such allegation(s) would have to be proved with clear and convincing evidence.

*Response*

The burden of evidence currently used is clear and convincing, which requires a showing that it is "highly probable or reasonably certain". The commenter requests a lower level of preponderance of evidence, which requires a showing of a "greater weight of the evidence". Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on these comments then 4.11-2 should also be amended.

**Comment 22. Findings.**

4.7-3. *Findings.* The Judiciary shall, within twenty (20) calendar days after the preliminary review has been completed, determine whether each allegation of the petition has been proven by clear and convincing evidence, and whether such allegations constitute sufficient

grounds for removal under 4.4-1. If the Judiciary determines that sufficient grounds have not been proven the Judiciary shall dismiss the petition. If the Judiciary determines that the sufficient grounds have been proven, the Judiciary shall forward the written findings to the Tribal Chair.

**Brian Doxtator:** 4.7-3: Findings – the process is unclear in the law.

*Response*

Section 4.7-3 concerns the findings of the Judiciary after the preliminary review. The Judiciary is to determine whether each allegation has been proven under the standard of law and whether it meets the grounds listed in 4.4-1. Depending on the findings, the Judiciary either dismisses the petition or forwards to the Tribal Chair. This process must be completed within twenty (20) days after the preliminary review. No changes are recommended based on the comment. If changes are made based on this comment then 4.11-3 should also be amended.

**Comment 23. General Tribal Council Meeting-OBC**

**Bradley Graham:** It's been General Tribal Council, period. We could have one meeting, to determine the facts, whether to proceed or not, and then have another meeting if we need to. But all this other stuff has got to be taken out, period. This could be a simple law. You've got way too much garbage in here. You're protecting certain people, you're allowing certain people to do things that shouldn't be doing it, just rewrite this whole thing, make it simple. I mean, petition signed – people have taken their time, they've verified their facts. You don't need the Judiciary; you don't need anyone else involved in this. The people who elected the people should be the ones deciding on who gets removed, period. Thank you.

**Ed Delgado:** I totally disagree with anyone saying that, well, you can sign a petition and go to GTC and GTC can adjudicate that provision, that wrongdoing. GTC is not an adjudicative body and they don't know how and they won't do it right, they'll play strictly on politics and people who are accused of things could be removed and they never did it. It's just politics, pure politics... at least they're having a trial. It gives you a chance.

*Response*

There are no changes recommended based on this comment.

**Comment 24. Vote requirement to Remove OBC Member**

4.8-3. *Determination.* ~~An elected official~~An Oneida Business Committee member may only be removed from office upon the affirmative vote of a two-thirds (2/3) majority of the General Tribal Council at a meeting called for the purpose of considering the removal.

**Mike Debraska:** 4.8-3 under termination Oneida Business Committee member may only be removed from office upon the affirmative vote of 2/3 majority which again, Brian touched upon, I don't think that should be in there.

**Bradley Graham:** What you got under 4.8 – I'm looking at the back part, the General Tribal Council meeting, where you've got 2/3 majority – take the "majority" out. It's either majority vote or 2/3 vote, that's parliamentarian, I don't like hearing that, that's something the white government uses, it's not actually in the Robert Rules, parliamentarian law, so, it's either majority vote we need or 2/3 vote. And in this case it would just be 2/3 vote. So that would be

line 144.

*Response*

The comment is referring to the use of “two-thirds (2/3) majority” in Section 4.8-3. It is suggested that the word “majority” at line 210 be removed. The Section should read:

4.8-3. *Determination.* ~~An elected official~~An Oneida Business Committee member may only be removed from office upon the affirmative vote of a two-thirds (2/3) ~~majority~~ of the General Tribal Council at a meeting called for the purpose of considering the removal.

**Comment 25. Quorum Requirement.**

4.8-4. *Quorum.* If the meeting of the General Tribal Council fails to obtain a quorum, the removal petition shall be dismissed.

**Brian Doxtator:** 4.8-4: Quorum. Factual information shall be provided to... so I was thinking on the... if there’s no quorum at General Tribal Council, I agree that this sends a message. But if you have factual information and General Tribal Council doesn’t meet, the elected official still has violated the law based on facts. And what I’m saying is if there is no quorum, that information should go to the Business Committee because they need to protect our assets within the organization, the elected official may lose their email, may lose access to financial databases, maybe even lose supervisory capabilities if they supervise staff. Just because it becomes political doesn’t mean it didn’t happen. And if we’re... I know we’re looking at politics here but are also looking at facts. And if something is factual... just because there was no quorum doesn’t make it not happen. And I think the Business Committee then should say “Ok, they weren’t removed, there was no quorum, however, this is something that did happen, and we need to address that within the organization.

*Response*

The commenter is asking for an amendment that would allow for punishment and/or stripping away of the authority of an Oneida Committee Business if findings in Section 4.7-3 are made by the judiciary but the General Tribal Council fails to meet the quorum needed to remove. Changes based on the comment are a policy decision best left to the discretion of the LOC. If changes are made based on this comment then 4.12-4 should also be amended.

**Comment 26. Removal Requests-Elected Official.**

4.9-4. *Removal Requests.* A board, committee, or commission may file a removal request with the Tribal Secretary for one of its members after adoption of a majority vote of the board, committee or commission regarding the removal request.

**Mike Debraska:** Additionally, under 4.9-4 removal requests, a board, committee, or commission may file a removal request with the Tribal Secretary for one of its members after adoption of a majority vote of the board, committee or commission regarding the removal request. My question to you is: Why can’t GTC members do this as well? Shouldn’t GTC have that ability as well? If you’ve got individuals who are serving on boards, committees and commissions, what about, say, the Election Board where time and time again, things are happening, things are going wrong. We know people whose rights are being abridged. Shouldn’t

GTC be able to come to the Business Committee and say, “this is it, we’re going to file a formal complaint”? Is it a complaint process? Is it a removal process? I don’t know. What is that particular process? And how should that be done? Because I look at it and say “GTC’s rights are being abridged here when you’re saying only the Business Committee should have this authority, that kind of becomes to me very dangerous as well because then there are no system of checks and balance.

*Response*

The commenter wishes for the General Tribal Council to have the ability to file a removal request under Section 4.9-4. While Section 4.9-3 allows “any eligible voter”, including GTC members, to file a petition to remove an elected official, a GTC member would still be under the petition requirements of 4.9-3. Changes based on the comment are a policy decision best left to the discretion of the LOC.

**Comment 27. Preliminary Review-Elected Official.**

4.10-4. The Judiciary review shall be conducted in the presence of the parties, who may be represented by counsel during the review. Opportunity to present evidence and testimony shall be provided. If the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed. If the Judiciary determines that a removal request does not contain valid action by the board, committee or commission the removal request shall be dismissed.

**Mike Debraska:** So, given that, I also look at the Judiciary’s ability here in this process, because at 4.10-4, it says that if the Judiciary determines that a petition contains less than the required number of valid signatures, the petition shall be dismissed. But yet earlier, it says that the Enrollments Office would verify those signatures. At what particular juncture, does the Judiciary then supersede Enrollments? If Enrollments has already verified those signatures and allowed that to go forward, then why is the Judiciary suddenly being more dismissive on that? That to me doesn’t make any sense. They should not have that authority. Not at that point. If somebody went out and took the time to collect those signatures because something is wrong, then for the Judiciary to arbitrarily and capriciously dismiss it and say “we find insufficient signatures”, that was already vetted at the Enrollments office. They shouldn’t be getting two bites at the apple. Sorry, I disagree with that. I think it abridges GTC’s rights and our Constitutionality. So those are just some of the points I have.

**Bradley Graham:** And like Mike said with the Judiciary, why would they have any rights to go through the names? They don’t. That’s Enrollments. Enrollments has always verified the names. Correct? So why put the Judiciary in there? The Appeals or nobody else has ever been involved in any removals.

**Bradley Graham:** And like Mike was saying, the verification of the signatures. It has always been done by Enrollments, like I said Judiciary should have nothing to do with this, period. They can’t remain unbiased because they sit in on stuff, they hear things, and like I said it should be up to us, the people of this Tribe to determine who stays, who goes. We voted youse in; that includes all of the elected officials.

*Response*

The commenters correctly point out that Enrollment Department is already tasked with checking

signatures:

4.5-4. Upon receipt of a petition, the Tribal Secretary shall promptly:

- (a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within five (5) business days, determine whether the petition contains the requisite number of signatures of eligible voters; and

However the court has already been given the ability to review during the Preliminary Review in Section 4.6-3:

4.6-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the petition may be reviewed by the Judiciary upon motion of the ~~elected official~~ Oneida Business Committee member whose removal is sought. The motion shall be filed within twenty (20) calendar days of service of the certified copy of the petition upon the ~~elected official~~ Oneida Business Committee member sought to be removed. The motion shall be in writing and the grounds limited to:

- (a) the authenticity of the signatures; and
- (b) whether the signature is that of an eligible voter.

No changes are recommended based on this comment. If changes are made based on this comment, then 4.6-3 should also be amended.

#### **Comment 28. Rights of Elected Officials.**

4.11-1. Rights of Elected Official at Hearing. An elected official whose removal is sought shall have the right to present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at his or her expense, be represented by counsel of his or her choice.

4.11-2. Burden of Proof. A person seeking the removal of an elected official shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

**Ed Delgado:** So, this is... you're trying to do it to get board members who are not showing up or making... doing bad things... have a way to hold them accountable. So when I was reading that I was looking at the processes, and for the processes, it ...shows, it doesn't provide an avenue whereby someone being accused of wrongdoing to... I know they have a hearing, and thank goodness for the hearings.

**Ed Delgado:** And it doesn't say who represents the board or commission who is trying to remove that board member. It says "the person" which is inconsistent with their purposes is that either a petition can remove that Board member, and we're not talking about BC, or the Board, Committee or Commission. But it says in your proposal: "the person" is responsible for approving those facts. It doesn't say which person on that Board and it also doesn't say: does the board have an attorney and who pays for that attorney? Is that the Tribe? Or is that the Board? The Board members?

#### *Response*

The commenter points out that Section 4.11-2 only provides for a "person" which is inconsistent with the removal requests to be filed by a board, committee, or commission. It is recommended that Section 4.11-2 be changed to read:

4.11-2. Burden of Proof. A person seeking the removal of an elected official or an appointed representative of the requesting board, committee, or commission shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist.

The commenter also expresses concern over who would represent the board, committee, or commission, if legal representation of the board, committee, or commission is allowed and who would pay legal costs. Changes based on this portion of the comment are a policy decision best left to the discretion of the LOC.

#### **Comment 29. OBC Determination.**

4.12-3. Determination. An elected official may only be removed from office upon the affirmative vote of six (6) members of the Oneida Business Committee at a meeting called for the purpose of considering the removal.

**Ed Delgado:** Also under there it says they can be removed by six votes. It doesn't say whether or not the chairwoman or chairman can vote. I know you mentioned it in our amendments, proposed amendments for the Constitution? It specifically mentions that, you know, eight votes with the chair not voting. So on this one maybe you need to determine whether or not you want the Chair to vote; what is the intent there. Otherwise, the Constitution doesn't really say.

**Ed Delgado:** *written*-Finally, I understand the issue that the OBC is trying to solve with the amendments which would provide a lesser number of signatures required for the removal of an elected official other than an OBC member. However, I just do not believe that the General Tribal Council will agree to giving up their authority to be the final decision maker in a removal. I've heard by some, "We elected them and we should have the authority to remove them." I support that concept. However, perhaps if you give the OBC the following responsibility: Upon proof of the allegations in the court, the OBC shall support the decision of the court and set a date whereby the General Tribal Council could either support or reject the court's decision. A special meeting of the GTC would not be required as our Oneida Construction only requires a special meeting for OBC members.

#### *Response*

The commenter requests the proposed amendments be changed so that the General Tribal Council could have final decision to either support or reject the court's decision. Changes based on the comment are a policy decision best left to the discretion of the LOC.

#### **Comment 30. General Comments**

**Brian Doxtator:** So, I think, if anything, the timelines truly need to be looked at. It should not take 8, 9, 10, 11 months to try and remove an elected official. That's ridiculous, it's inefficient, and wherever you can streamline the process and make it by law, our law – because the Judiciary has to follow our law, not their processes. It has to move much more quicker than nine, ten months. So anyway, that's my comments for today, I say yaw^ko.

#### *Response*

The commenter is correct that there is no underlining timeline. However, after the filing of the petition, there are certain timeline requirements under the legislation totaling 90 days:

- 4.5-4 Tribal Secretary promptly submits petition to Enrollment Department;
- 4.5-4(a) Within five (5) days for Enrollment Department to verify signatures;
- 4.5-6 Tribal secretary promptly submits to Judiciary;
- 4.6-1 Within twenty (20) days Judiciary has to hold a preliminary review;
- 4.7-3 Within twenty (20) days after preliminary review judiciary must make findings and forward to GTC;
- 4.8-1 Within forty-five (45) days GTC hold special meeting

If LOC wishes to incorporate more specific time requirements the most prudent location would be in section 4.5-4 and 4.5-6 replacing “promptly” with a specific time frame.

**Bradley Graham:** So this whole thing needs to be rewritten. It has to be more precise and clear. You can’t have one department doing something; another department doing something else.

*Response*

There are no changes recommended based on this comment.

**Ed Delgado:** I think we need to look back at the purpose of the Removal Law. Some of the discussions taking place when it was passed. When it was passed, a lot of the boards, committees commissions, elected and non-elected, they were determining in session, their own session, they were doing a lot of removals and politics, and whatnot. The Business Committee, after hearing those, and having a lot of discussion decided maybe, for elected officials, that the position should be that the General Tribal Council put them in, and the General Tribal Council should be the body to take them out. Although I do understand the need for some of these boards, committees and commissions, where nobody is going to have the initiative to take out an elected commission, commissioner, a board, or whatever, they’re just not going to do it. Concentrate on the BC maybe, but not so much on a Board.

*Response*

There are no changes recommended based on this comment.

**Conclusion**

There were multiple comments provided on the Law, both at the public meeting and in writing which the LOC should consider and incorporate as appropriate. After the LOC reviews the comments and provides direction as to any changes necessary based on the comments, the draft and analysis should be updated and may be prepared for OBC consideration.