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Legislative Reference Office

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Memorandum

TO: Legislative Operating Committee
FROM: Douglass A. McIntyre, Staff Attorney
DATE: November 18, 2015
RE: Removal Law Amendments: Public Meeting Comment Review

On October 29, 2015, a public meeting was held regarding proposed amendments to the Removal Law (Law). Amendments to the Law include:

- Establish two separate processes for removing an elected official from office: one process for Oneida Business Committee members and one for all other elected officials. The separate processes differentiate between boards, committees and commissions and the OBC.
- As the final step in the removal process, General Tribal Council would still vote on the removal of an OBC member, but for all other elected officials, the OBC would make the final decision, and the official would be removed from office if six OBC members voted in favor of removal;
- The amendments enable Tribal boards, committees, and commissions to submit a formal removal request for one of their elected members, without having to collect signatures for a petition. In order to submit a removal request, the entity would only need to approve, by majority vote, of taking such action;
- A new provision adds that if elected officials of a board, committee or commission violate their entity's bylaws, operating agreements, laws, regulations or SOPs; it is grounds for removal.

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.

Comments 1 & 2. General Comment on the Amendments
Comment 1. Bradley Graham: and everything and just make this a simple Removal Law. Take it before GTC period. Let them decide. We're the ones that elect you, we're the ones that hold you accountable.
Jennifer Webster: We know that.
Bradley Graham: So it's, this law here should be thrown out period. And rewritten. Don't even bring this forward to GTC, don't even waste our time and money. Let's just make this a good law, a simple law. Let the people take care of it. Thank you.
Comment 2. Mike Debraska: Thank you, I listened to quite a few of the comments and I'm actually in agreement with several with them. I think this entire law needs to scrapped and

brought back. I look at this and saying we're creating a tri-part system here where you're going to have all these multiple laws when this really should not be happening. I believe that GTC, by drafting something like this and this being brought forward by another body to bring it forward, they should be here to answer the questions at the at the very least.

Response.
The commenters give general statements and request that the draft should be re-written. There are no specific recommended changes based on the comments.

Comment 3. Intent of the Amendments.
Nancy Barton: Ok well if you submit you know to change something at least you can do is show up so that you could hear what other people had to say. I feel like this entire Removal Law amendment once again we don't know what the underlying cause was regarding why this was brought forward.
Comment 4. Michelle Mays: Michelle Mays with the Oneida Law Office. I guess I would ask and I understand where Mr. Debraska is coming from, but I guess I would as if there if they have issues with the proposals that they perhaps come up with alternatives. And the reason being is right now if we have an elected official who is not attending meetings as required the bylaws of the committee or commission that they were elected too, there's nothing that the board, committee or commission can do in regards to that particular member short of removal. These terms usually are only for a period of three years. So if this occurs during the second year of their term and you have to go through the prior removal process and take it to General Tribal Council, as we all know, that could take the full year, year and a half to get to General Tribal Council to even get to the removal process. So that poses a problem to actually be able to handle the issue of nonattendance. Or the not even the necessarily meeting the requirements. For example, Trust and Enrollment Committee, if someone, and this is clearly hypothetical, if someone should for some reason be arrested for a financial crime of some sort, that stops them from meeting their requirements to sit on the Trust and Enrollment Committee. But there's nothing in the bylaws and there's nothing in any law that the Trust and Enrollment Committee can actually take action to suspend them from the Trust/Enrollment Committee while that action is pending. The only option is to take it General Tribal Council right now through the removal process and that just isn't a good process. It takes an enormous amount of time and in the meantime you could have someone sitting on the committee that potentially is a danger to the committee in that financial way. Or you have an empty spot, a voting spot, where you, you're having nonparticipation when that participation is really important. So I understand the sentiment of trying to, having, because they're elected, to go to Tribal Council but the process to get there is just to long at this point. So, thank you.

Response.
One commenter asks the intent behind the changes. The second commenter explains the reasoning. Additionally, the Agenda Request Form from the Trusts and Enrollment Committee states "Currently, in order to remove an elected person from a board or committee the extensive process of the removal law must be followed. The Trust and Enrollment Committee is asking that the Removal Law be amended to give Boards and Committees the ability to remove a member if that member is failing to attend meetings or violates the bylaw of the board or

committee. The removal process is too costly." However, once a law or policy is on the active files list it is open to changes beyond the original request. There are no recommended changes based on the comments.

Comment 5. Policy.
Bradley Graham: Just be forewarned I never even got through the whole thing but, let's get right into this here. Line 171, it says removal of persons selected to serve on the BC, take that one out and it should be, all persons elected and appointed to on serve boards, committees and commissions of the Oneida Tribe of Indians.

> 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.

Response.
The commenter requests the added language be removed. There are no effects to the law if the requested language is removed. Any changes based on this comment should also be made to 4.-1.

Comment 6. Authority to Amend and Repeal.
Nancy Barton: And so I would caution that this law before it goes forward, that it needs to go to the General Tribal Council for a final vote.

> 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.

Response
Any changes to the Removal Law require a majority of GTC support to pass. There are no recommended changes based on this comment.

Comment 7. Authority of GTC.
Nancy Barton: I have a pretty good idea, I went to talk to several people regarding it but I just feel like, they're trying to take the authority once again away from GTC. This Department, the Trust and Enrollment Committee, they function because of GTC. Their bylaws their memorandum of agreement, all the rules that govern the functions that they do are a direct result of GTC directive. And so when you add certain things to those GTC directives then I'm feeling you're taking GTC's power away and that you're trying to give it back to the Business Committee.

Response
Any changes to the Removal Law require a majority of GTC support to pass. GTC is free to amend this law and delegate its authority. There are no recommended changes based on this comment.

Comment 8. Section 4.2-3.
Bradley Graham: And then you go down to the next one, the appointed, 4.2-3, if you go on line 180 and line 1 through 183 and take that all out, that conflict or whatever it is.

> 4.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

Response
The commenter requests that Section 4.2-3 be removed. 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 and amendment of new laws. This language is consistent with Section 6.121 (b) of the Legislative Procedures Act which states:

> "The following shall be the wording of Section 2, unless other sections are necessary to convey needed information on a law:
>
> …
>
> 2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

There are no recommended changes based on the comment.

Comment 9. Ground for Removal.
Bradley Graham (partial comment, full comment in Comment 1): We can add more in for ground for removal…

Response.
The commenter appears to state that more should be added to the grounds for removal section, but does not give specifics. Any changes are a policy decision for the LOC.

Comment 10. Separate Processes.
Bradley Graham: Like I said, it should just be all, everybody should be included under one. The grounds for removal, I think that, in fact actually let me just put it this way. This whole law needs to be totally rewritten and done right period. There should be no separation because the way you're looking at this, the way I look at this and read this law, you're gonna have to create three different removal processes. You're having one for the Business Committee only, you're going to have one for appointed positions which are going to go before the Business Committee and then you're going to have one for the Judiciary. I just think it should be plain and simple. Every elected and appointed person in this Tribe should go before General Tribal Council like it used to be. You do a petition, it goes before GTC, each party does their grievance and then GTC does a secret ballot vote period. There shouldn't be a law like this. All this redline version in

here, everything in here is just BS. Plain and simple, we the people elect the people. You work for us. So we should have the right and the determination to do the removals. The Judiciary should not be involved in anything, period. Because they're not really legal, they can't remain unbiased and it's just plain and simple. Just, if you want me, I'll work with you, we can make this a one page, two page at the most.

Response.
The commenter suggests that all elected officials go through the same process. The intent behind the suggested changes is to create two separate but similar paths that allow the individual facing removal due process. Additionally, it avoids the cost of a GTC meeting and allows an individual to be removed quicker than the current law provides. Any changes are policy decision for the LOC.

Comment 11. Enrollment Department.
Bonnie Pigman: Good afternoon. I am looking at lines 273-285. And the section starting at 273, I just wanted to clarify what Enrollment Department roles are in regards to petitions. The Enrollment Department verifies the persons listed on the petition are eligible voters. They also provide a cover sheet that shows the results of the information regarding those that have signed the petition and then they notify the Secretary's Office when the verification is complete. So there would be, subsections underneath (a) for the two different, the three different things that we do in the Enrollment Office. And then you would have to strike out on lines 280 it should read if the petition does not contain the requisite number signatures the Enrollment Department verifies that would have to be stricken out. And then the same language on line 285, strike out the Enrollment Department determines that. . .
Jennifer Webster: 285 you said?
Bonnie Pigman: Mmhmm, cause we do not, we do not tell anyone whether or not the petition contains a requisite number of signature, we just provide the results of whether or not the individuals who put their name to the petition are eligible voters and that's information is shared on that covered sheet. That's it.

Response.
The commenter wishes for Section 4.5-5 to be clarified. Her suggested changes beginning in 4.5-5 at line 274:

> (a) Submit such petition to the Oneida Tribal Enrollment Department which shall, within five (5) business days, ~~determine~~ verify ~~whether the petition contains the requisite number of~~ the signatures of eligible voters on the Petition and notify the Tribal Secretary of the verified petition; and

And at 4.5-6 and 4.5-7.

> 4.5-~~5~~6. If ~~the Enrollment Department determines that~~ the petition does not contain the requisite number of signatures, the Tribal Secretary shall so certify to the Oneida Business Committee and file the petition without taking further action, ~~and~~ the matter

shall be at an end~~.~~ for lack of requisite signatures. No additional names may be added to the petition, and the petition ~~shall~~may not be used in any other proceeding.

4.5-~~6~~7. If ~~the Enrollment Department determines that~~ the petition contains the requisite number of signatures, then the Tribal Secretary shall promptly cause a certified copy of the petition to be served upon the ~~elected official~~Oneida Business Committee member sought to be removed and forward a copy of the same to the Judiciary.

Similar changes should be made at the corresponding sections in Section 4.9.

Comments 12 & 13. Judiciary.

Comment 12. Julie Barton: We have a lot of young new people. And since, in the ten years I've been gone so I think there's a lot to be learned yet from our experiences. And we know who, I guess some of you haven't been there, like I said the last time I was here you were probably in high school when these things happened or you were in grade school even. But they were very very traumatic. Very very long lasting and because some of our systems didn't work and be taking it to General Tribal Council, I don't quite agree. I do agree that we are the governing body of this Tribe and I will always uphold that but in this case, this is one incident where we should not have General Tribal try somebody to remove them because there are so many facts that need to be found in a case like this. And from again, the past experiences, people get very emotional and we could have a lot of liabilities. We did have one, its wasn't quite a removal, it could have gone to that but it was very emotional, it was liability. It was carried out through the outside courts and it was won. And so, you know we have to be, we have to protect our General Tribal Council people, they could have very well had misinformation and stand before a quorum and have something said that's not true. Those facts have to be there and this is what our Judiciary system is all about. Or even another body who can review facts. Because without those, people do not deserve to be removed until you know as the saying goes, they should be, our system on the outside goes by you're innocent until proven guilty. Well we must prove that and if its proven on the floor of GTC, I don't think that works very well just from my experiences. So I would hope that we have a system that will protect all of us if and when the time comes and it doesn't happen very often but it needs to be there. And we also need to look at the Constitution that it doesn't, that this law does not violate that. Thank you.

Comment 13. Ed Delgado: When this law was passed it was for the intent of providing due process for someone accused or under being removed. Julie was right, General Tribal Council doesn't necessarily provide due process. Whoever says or has the loudest voice in General Tribal Council would prevail in the removal and it could be all lies. So to have a Judiciary trained in law, trained in our due process rights was the intent to creating it, putting the Judiciary in here. And I support that. And as far as I know, we have a building called Tribal Judiciary down on Mason Street, we do have Judiciary elected by General Tribal Council, created by General Tribal Council and anyone that says otherwise you need to go down Mason Street or look in the Tribal record and see when General Tribal Council decided to create a Judiciary to replace the Appeals Commission. So we need to look at that.

Response.

The commenters here appear to support the involvement of the judiciary in the process citing a

number of reasons including due process and concerns over the evidence submitted to GTC if it was the fact finder. The intent behind the changes are to have a neutral body that could ensure due process instead of holding a hearing before GTC. No changes are recommended based on these comments.

Comment 14, 15, 16, 17 & 18. GTC Final Determination

Comment 14. Mike Debraska: But be that as it may, if if they want to bring this forward, this should be brought to GTC and GTC ultimately should be the one that decides whether or not someone should be removed from office. I look at that and say to me we're the ones who elected you guys, we should be the ones to hear the fights and arguments that are going on. If someone has a beef, GTC should be able to determine whether or not that beef is personal or if there is something else going on. Something behind the scenes. And that would be, that would all be brought out. Again, during those arguments. I think having the Judiciary involved in this, bad idea, very bad idea. I think, I think it starts with GTC who votes you in, it should end with GTC and GTC making those decisions. Additionally, I look at this and say I've got some serious concerns because other laws that are being pushed forward right now, currently within the Tribe, are excluding certain bodies, certain certain boards, committees and commissions. And I look at that and I say when you start doing things like this, this excludes or can include certain groups but exclude others. And I look at that and say that's where we start running into serious problems. I think we need one cohesive law that can be done very easily. Thank you.

Comment 15. Ed Delgado: Regarding the request to remove elected officials. It was said earlier that the people elected them. So it should be the people who remove them. And that's true after due process. After the Judiciary, I don't support this part where the Business Committee would remove an elected official. What it will create is Tribal members on these various boards, committees and commissions afraid to really speak up, afraid to rock the boat, afraid to get a bad name with that, with their individual council or individual board or committee and we're not talking about the Business Committee here, we're talking about various boards. Cause if you do well then the board can get together and recommend your removal. And then you go before the Business Committee and that's politics too often times. I've seen it for 9 years. We're not we weren't above politics. That's why the intent was that the people, the General Tribal Council would be the final say and I do believe it should be 2/3 majority vote, just like the Business Committee.

Comment 16. Ed Delgado: The final comment is that a lot of this was created because around 15 years ago a Tribal, a young Tribal member was on a committee that she felt was doing wrong. So she told General Tribal Council about what that committee was doing. Now she went back to that committee and she was removed. So part of that but it was an appointed position so, part of the reasoning behind the creation of the original removal law, creating the Judiciary, was the attempt to create a process in between the two political bodies. The elected or appointed, no the elected body and the General Tribal Council. One that would provide due process but I do support that evidentially, the final say, for everyone, except for appointed positions. All elected officials should evidentially go before General Tribal Council. If depending on what the Judiciary says, if the Judiciary says there's no basis to this, this doesn't rise to a removal well then it wouldn't go to GTC. So that's the part I support but I would not like to see boards, committees or commissions, elected, other than the BC, even the BC for members to be afraid to be the odd ball. To be afraid to speak up when something you feel is wrong because we need

that. When something is wrong, we want those various boards, committees and commissions to speak up. And we don't want them to fear removal by their comrades. Because that was what was happening before we created a Judiciary and then the final say going to General Tribal Council. So I don't support that part of this law

Comment 17. Nancy Barton-written: The Removal Law Amendments- Those need to come in their totality to General Tribal Council as submitted by the Trust & Enrollment Department at their semi-annual report, which they refused and have not done in several year but are required by the Memorandum of Agreement between the Trust Department and the Business Committee. Why are you hiding- we can add, subtract and read.

Comment 18. Cathy L. Metoxen-written: 2. Removal Law, needs to go to GTC.

Response.

The commenters state that all final determinations should go to GTC citing a number of reasons including creating timid officials afraid to "rock the boat" and it is the broader membership that elects officials. The intent behind the changes are to avoid the large cost and long time needed to take a matter to GTC. Any changes based on these comments is a LOC decision.

Comment 19. Representation of the Petitioner.

Ed Delgado: but if you do pass it or if General Tribal Council does pass it, there's a provision in here where the board, committee or commission goes to Court to try and prove or they have to prove that the person they want to remove deserves removal. It doesn't say anything about representation. Who, now the the accused person has to provide their own counsel if they wish so. I just want to make sure that if the various boards, committees and commissions are requesting a person's removal that they have to prove it, they have to provide their own counsel and they shouldn't be able to use a Tribal lawyer or get paid for it. If the accused has to bear the burden of counsel so should the accuser. Yaw^ko

> 4.11-2. *Burden of Proof.* A party seeking the removal of an Elected Official has the burden of proving by clear and convincing evidence that ground(s) for removal exist.

Response.

The commenter is referring to the provision in 4.11-2 and suggests that any board, committee or commission asking for the removal of a member not be able to use the Tribal attorney. The law is currently silent to the issue. Any changes based on the comment are policy decisions for the LOC.

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.