

Chapter 4
REMOVAL LAW
Kwah Oná ʔluwalihutákwás Kayanláhsla
Just when they will remove him our kind of laws

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| <ul style="list-style-type: none"> 4.1. Purpose and Policy 4.2. Adoption, Amendment, Repeal 4.3. Definitions 4.4. Grounds for Removal 4.5. Removal – Oneida Business Committee 4.6. Preliminary Review – Oneida Business Committee 4.7. Hearing – Oneida Business Committee | <ul style="list-style-type: none"> 4.8. Final Determination of General Tribal Council Meeting – Oneida Business Committee 4.9. Removal – Elected Official 4.10. Preliminary Review – Elected Official 4.11. Hearing – Elected Official 4.12. Final Determination of Oneida Business Committee Meeting – Elected Official |
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Analysis by the Legislative Reference Office					
Title	The Removal Law (the Law)				
Requester	Oneida Law Office; Trust/Enrollment Committee	Drafter	Lynn Franzmeier	Analyst	Tani Thurner
Reason for Request	Stating that the current removal process is too costly, the Trust & Enrollment Committee requested changes to the Removal Law that would enable Tribal boards, committees and commissions (entities) to remove elected members who fail to attend meetings or violate the entity’s bylaws.				
Purpose	These proposed amendments do not enable an entity to directly remove its’ own elected officials; but do enable those entities to avoid the current petition process by instead filing a formal removal request. Also, the process is changed so that for all elected officials <u>except</u> Oneida Business Committee (OBC) members; the OBC would have the final vote on whether to remove the member, instead of the General Tribal Council.				
Authorized/ Affected Entities	Judiciary, OBC, elected officials and the entities on which they serve.				
Due Process	Elected officials can request that the Judiciary review the validity of removal petition signatures or the action taken for a removal request. The official is also entitled to both a preliminary and a formal hearing before the Judiciary; and then the GTC (for OBC members) or OBC (for all other elected officials) vote on whether to remove the elected official.				
Related Legislation	Comprehensive Policy Governing Boards, Committees and Commissions				
Policy Mechanism	Removal process				
Enforcement	Dismissal of the removal request/petition.				

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Overview

The proposed amendments to the Removal Law (the Law) change the current process for removing elected officials from office. Instead of one single removal process for all elected officials, the amendments split this Law into two separate parts – one sets out a process for removing Oneida Business Committee (OBC) members from office, and the other sets out the removal process for all other elected officials serving on a Tribal board, committee or commission (hereinafter: “entity”). The proposed amendments distinguish the OBC - which was established by the Tribal Constitution; from other entities - which were created by Tribal law.

Removal of an OBC Member

11 OBC members would still be subject to the same basic removal process established under the
12 current law - *i.e.* a signed petition is submitted; a preliminary and then formal hearing are held
13 before the Judiciary; and if the petitioner proves with clear and convincing evidence that grounds
14 for removal exist, then a GTC meeting is called within 45 days where GTC votes on whether to
15 remove the elected official. [4.5 to 4.8]

16 *Removal of all other Elected Officials*

17 All other elected Officials (non-OBC members) would still be subject to the same
18 removal process established under the current Law, but with two major changes:

- 19 1. The OBC, instead of the GTC, would have the final vote on whether to remove an
20 elected official. After the Judiciary conducts a hearing and forwards its decision, a
21 special OBC meeting must be called, and if six members of the OBC vote for
22 removal, then the official is removed from office. Like GTC meetings held for the
23 removal of an OBC member, the OBC meeting must be held within 45 days after
24 receiving the Judiciary's decision; and the removal request/petition must be dismissed
25 if there is no quorum at the special OBC meeting. [4.12]
- 26 2. There are now two ways (instead of one) to begin the removal process:
 - 27 • **Petition.** The current petition process would continue to be available. [4.9-3]
 - 28 • **Removal Request.** The amendments would enable a Tribal entity to submit a
29 formal request to remove one of its elected officials, instead of submitting a
30 petition. In order to do this; the entity must, by majority vote, approve taking such
31 action. [4.9-4]
 - 32 ▪ A removal request is treated much the same as a signed petition - for
33 example, the official may request that the Judiciary review the validity of
34 the action taken by the entity, just as s/he would be able to request that the
35 Judiciary review the validity of the signatures on a petition. [4.10-3] For
36 the preliminary and formal hearings before the Judiciary; the entity is
37 deemed to be the other party to the action (instead of the petitioner), and is
38 responsible for proving the allegations against the elected Official at the
39 formal hearing. [4.11-2 and 4.11-3]

40 *Grounds for Removal*

41 A few changes are made to the grounds for removal set out in the Law – *i.e.* the reasons
42 OBC members and other elected officials can be removed from office:

- 43 • Any official can still be removed from office for failing to attend four regularly scheduled
44 meetings without a written explanation; but the amendments clarify that this only applies
45 if the official misses all four meetings within a single term; without an excused written
46 explanation. [4.4-1(a) and 4.4-2(a)]
- 47 • Any official can still be removed if s/he no longer meets the qualifications for office, but
48 the amendments clarify that OBC members, this means the qualifications for office as
49 identified in the Oneida Constitution; and for all other officials, it means the
50 qualifications for office as identified in by-laws and Tribal law. [4.4-1(a) and 4.4-2(a)]
- 51 • OBC members can still be removed for violating a Tribal law which specifies removal as
52 a penalty; but a new provision adds that all other elected officials, except OBC members,
53 can be removed from office for violating:
 - 54 ○ their entity's by-laws, operating agreements, or standard operating procedures, or
 - 55 ○ laws, policies or regulations of the Tribe. [4.4-1(c)]

56 This means OBC members would be the only elected officials that could only be
57 removed from office for violating a Tribal law if that law specified removal as a penalty.
58 All other elected officials could be removed from office for violating any Tribal law, or

59 their entities' bylaws, operating agreements, or standard operating procedures, or any
60 other Tribal policies or regulations.

61 *Other Changes*

62 The following are additional changes that would be made to the Law:

- 63 • Currently, the Law states that a petition may not be amended after it is filed with the
64 Tribal Secretary. Under the amendments, new language adds that the first signature on a
65 petition must be done in the presence of the Secretary's Office staff, and that once a
66 petition has the first signature, it cannot be amended. [4.5-3 and 4.9-3]
- 67 • Petitioners would be required to use an official petition form, obtained through the Tribal
68 Secretary's Office, instead of creating their own form. Petitions are no longer required to
69 include an oath verifying that the circulator witnessed each person sign the petition, that
70 each signature is genuine, and that the petition was signed in the presence of the witness
71 on the date indicated. [4.5-2 and 4.9-3(a)]
- 72 • Currently, a petition must state the facts and grounds for removal in 200 words or less.
73 Under the amendments, the limit is increased to 300 words or less, and this requirement
74 also applies to removal requests. [4.5-3 and 4.9-3]
- 75 • After a hearing, the Judiciary issues a decision, instead of "findings". The Judiciary
76 would still forward their decision to the Tribal Chair, but the amendments appear to
77 authorize the Chair to designate another person to whom the decision must be sent
78 instead. [4.7-3 and 4.11-3]
- 79 • The Law no longer specifically requires the Tribal Chair to call a GTC meeting within 45
80 days of receiving the Judiciary's findings; instead it states that a GTC meeting shall be
81 held within 45 days after receiving the Judiciary's decision. [4.8-1]
- 82 • New language adds that the OBC and GTC determinations (about whether to remove an
83 OBC member or elected official) are not appealable. [4.8-5 and 4.12-5]
- 84 • Currently, the Law addresses what must happen if the elected official sought to be
85 removed is a member of the Judiciary - the Clerk of Courts must convene a panel of three
86 judges who are members of the Wisconsin Tribal Judges Association to carry out the
87 Judiciary's responsibilities. That language is deleted.

88 **Miscellaneous**

89 Various language and formatting changes are made to reflect the fact that the OBC officials
90 are subject to different removal requirements; and the Adoption; Amendment; Repeal language
91 (Section 2) was revised to comply with the Legislative Procedures Act. Except as described
92 above; these changes do not affect the content of the Law.

93 A public meeting was held for this item on April 30, 2015. The comments received by the
94 LOC during that public meeting and following public comment period have been reviewed and
95 considered for this draft.

96 **Considerations**

97 The following are issues the LOC may want to consider:

- 98 • **Application to the Judiciary.** The Law no longer specifically addresses what would
99 happen if removal of a Judge of the Judiciary is sought. Removal of Judges raises a few
100 issues:
 - 101 ○ There may be confusion as to whether or how this Law applies to Judges of the
102 Judiciary. The Removal Law defines (and applies to) an elected official as any
103 person elected to a position; or appointed to vacancies on an elected position; on a
104 Tribal board, committee or commission. [4.3-1(b)] Judges are generally elected
105 officials, but the Judiciary is not typically considered a Tribal Board, Committee
106 or Commission. Also, the Judiciary Law sets out a disciplinary process for

107 Judges, stating that “Where a disciplinary report recommends that a Judge be
108 removed from office, removal proceedings shall be commenced in accordance
109 with applicable removal law.” [Judiciary Law, 150.12-6(d)(3)] If this Law does
110 not apply to Judges, then there is no existing removal law to govern removal of
111 judges.

112 *Recommendation:* Add language to this Law clarifying whether this Law applies
113 to Judges of the Judiciary; or whether a separate removal law would need to be
114 established for Judges.

115 ○ Under the Judiciary Law, there is a separate disciplinary process for its judges.
116 This process includes an initial and then formal hearing before a disciplinary
117 panel. The panel ultimately issues a disciplinary report; and the Judiciary is
118 required to immediately carry out the disciplinary action ordered in that report. If
119 removal is recommended, “removal proceedings are commenced in accordance
120 with applicable removal law.” [Judiciary Law, 150.12-6(d)(3)] Under the
121 Removal law, this would mean that the Judiciary would then either need to
122 petition, or submit a removal request - the Removal Law does not mention
123 anything about a separate process for Judges. This would also mean that a Judge
124 would be subject to multiple, repetitive hearings – the disciplinary panel would
125 first conduct an initial hearing to determine if probable cause exists; and then a
126 full hearing (where the Judge can present testimony/evidence, and cross-examine
127 witnesses) to determine an appropriate penalty (removal is only one penalty that
128 could be imposed). After both of those hearings, if removal is ordered, this Law
129 would again require the same hearings for a Judge as for all other elected
130 officials. Nearly duplicative hearings may not be the most efficient use of Tribal
131 resources – not to mention it would be a substantial burden for a Judge.

132 *Recommendation:* There are various options that could resolve this issue. First, it
133 is recommended that the Law specifically state that the Law also applies to Judges
134 of the Judiciary. Then, one suggestion would be to add language to this Law
135 and/or to the Judiciary law, to clarify that when a disciplinary panel orders
136 removal of a Judge, then the hearings required under the Removal law are
137 bypassed, and the Disciplinary Report shall be forwarded directly to the Tribal
138 Chair who must then call a special OBC/GTC meeting.

139 ● **Preliminary Review and Motions to Challenge Validity.** The Judiciary is required to
140 schedule a preliminary review, which must take place within 20 days after the Judiciary
141 receives a petition or removal request from the Tribal Secretary. [4.6-1 and 4.10-1] Also,
142 an official can file a motion to challenge the validity of a petition’s signatures or the
143 entity’s action that authorized a removal request – which must be filed within 20 days
144 after the Official is served with the petition or removal request. [4.6-3 and 4.10-3]

145 ○ There is no timeline for the motion to challenge the validity of the signatures or
146 entity action. Also, it appears that the motion is unrelated to the preliminary
147 review.

148 *Recommendation:* In the interest of judicial economy, it may be beneficial to
149 require the respondent to file the motion in time to have it heard during the
150 preliminary review. Otherwise, at a minimum, it is recommended that a timeline
151 be added for when the motion must be heard and decided by.

152 ○ When a person files a motion challenging the authenticity of signatures or validity
153 of an entity’s action in making a removal request; it is not clear who has the
154 burden of proof or what that burden of proof might be. By comparison, at a
155 hearing, the party seeking the removal of an Elected Official has the burden of

156 proving by clear and convincing evidence that ground(s) for removal exist. [4.11-
157 2]

158 *Recommendation:* Identify legal standards and/or burden of proof so that the
159 Judiciary may more easily interpret this Law and not have to develop their own
160 standards for determining what either party must show or prove in order to prevail
161 on such a motion.
162

163
164 **Chapter 4**
165 **REMOVAL LAW**
166

167 **4.1. Purpose and Policy**

168 4.1-1. The purpose of this Law is to govern the removal of persons elected to serve on the
169 Oneida Business Committee and on boards, committees and commissions of the Oneida Tribe of
170 Indians of Wisconsin.

171 4.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide an orderly and fair
172 process for the removal of persons elected to serve on the Oneida Business Committee and on
173 boards, committees and commissions.
174

175 **4.2. Adoption, Amendment, Repeal**

176 4.2-1. This Law is adopted by the General Tribal Council by ~~GTC~~ Resolution #~~1~~GTC-01-09-06-
177 A and amended by Resolution BC-05-28-14-B- and by Resolution GTC.

178 4.2-2. This Law may be amended or repealed by the General Tribal Council ~~only~~pursuant to the
179 procedures set out in the Legislative Procedures Act.

180 4.2-3. Should a provision of this Law or the application thereof to any person or circumstances
181 be held as invalid, such invalidity shall not affect other provisions of this Law which are
182 considered to have legal force without the invalid portions.

183 ~~All other Oneida laws, policies, regulations, rules, resolutions, motions and all other~~
184 ~~similar actions which are inconsistent with this law are hereby repealed unless specifically re-~~
185 ~~enacted after adoption of this law. Specifically, the following resolutions are repealed by this~~
186 ~~law~~In the event of a conflict between a provision of this Law and a provision of another law, the
187 provisions of this Law shall control. Provided that, this Law repeals the following:

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

193 4.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of
194 Wisconsin.
195

196 **4.3. Definitions**

197 4.3-1. This section shall govern the definitions of words or phrases ~~as used herein~~within this
198 Law. All words not defined herein shall be used in their ordinary and everyday sense.

199 (a) "Counsel" means an attorney or advocate.

200 ~~(b)~~(b) "Elected Official" means, for the purposes of this Law, any person elected to a
201 position on a board, committee or commission of the Oneida Tribe of Indians of
202 Wisconsin and those appointed to vacancies in elected position on a board, committee or

203 commission. For the purpose of this Law, this definition will exclude members of the
204 Oneida Business Committee who are subject to separate removal provisions under this
205 Law.

206 (c) "Eligible voter" means a person able to vote under the Constitution of the Oneida
207 Tribe of Indians of Wisconsin.

208 (d) "Judiciary" means the judicial system that was established by Oneida General Tribal
209 Council resolution GTC-#1-01-07-13-B to administer the judicial authorities and
210 responsibilities of the Tribe.

211 (ee) "Tribe or Tribal" means the Oneida Tribe of Indians of Wisconsin.

212 213 **4.4. Grounds for Removal**

214 4.4-1.4.4-1. Oneida Business Committee. A member of the Oneida Business Committee may be
215 removed from office for any of the following reasons:

216 (a) failure to attend four (4) regularly scheduled meetings per term without an excused
217 written explanation;

218 (b) intentional mis-use of Tribal funds;

219 (c) alcohol use while performing official responsibilities or use of illegal drugs at any
220 time;

221 (d) failure to continue to meet the qualifications for office as identified in the Oneida
222 Constitution;

223 (e) violating a Tribal law which specifies removal as a penalty; or

224 (f) felony conviction while in office.

225 4.4-2. Elected Official. An Elected Official may be removed from office for any of the
226 following reasons:

227 (a) failure to attend four (4) regularly scheduled meetings per term without aan excused
228 written explanation;

229 (b) failure to attend fifty percent (50%) of an entity's regular scheduled meetings within
230 a twelve (12) month period for any reason ~~provided that this subsection shall not apply to~~
231 ~~the Oneida Business Committee;~~

232 (c) violation of the by-laws, operating agreements, or Standard Operating Procedures of
233 the board, committee or commission and laws, policies or regulations of the Tribe;

234 (d) intentional mis-use of Tribal funds;

235 (~~de~~) alcohol use while performing official responsibilities or use of illegal drugs at any
236 time;

237 (~~e~~) ~~if he or she no longer meets~~(f) failure to continue to meet the qualifications for office
238 as identified in by-laws and Tribal law;

239 (~~fg~~) violating a Tribal law which specifies removal as a penalty; or

240 (~~gh~~) felony conviction while in office.

241 242 **4.5. ~~Petition~~Removal – Oneida Business Committee**

243 4.5-1. Any eligible voter may file a petition with the Tribal Secretary seeking the removal of an
244 ~~elected official.~~Oneida Business Committee member. No petition ~~shall~~may request the removal
245 of more than one (1) ~~elected official.~~Oneida Business Committee member.

246 4.5-2. The petitioner shall use an official petition shallform as designated by this Law, which
247 may be obtained through the Tribal Secretary's Office. The petition must, at a minimum, include
248 appropriate lines for the eligible voters':

249 (a) printed name;

- (b) signature;
- (c) street address; and
- (d) Oneida Tribal Enrollment Number.

4.5-3. The petition must state with particularity the facts upon which it is based and the specific grounds for removal, in not more than ~~two~~three hundred (~~200~~300) words, and must be signed by ~~fifty (50) or more eligible voters or~~ a number of eligible voters equal to at least thirty (~~30~~) percent (30%) of the ~~vote~~votes cast in the previous general election, ~~whichever is greater.~~ A petition may not be amended after it is filed with the Tribal Secretary. The first signature on a petition must be done in the presence of the Secretary's Office staff. Once a petition has the first signature, it cannot be amended.

4.5-24. The petition ~~shall~~must be filed with the Tribal Secretary's Office within thirty (30) calendar days after the date the first signature is obtained on the petition.

~~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~~
- ~~(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.~~

4.5-~~54~~. 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~~verify whether the petition contains the requisite number of signatures of eligible voters; and

(b) Notify the ~~elected official~~Oneida Business Committee member sought to be removed that a petition has been filed seeking his or her removal by providing a copy of the uncertified petition.

4.5-~~56~~. If the Enrollment Department ~~determines~~verifies 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-~~67~~. 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.

4.5-~~78~~. In the event the removal of the Tribal Secretary is sought, the Tribal Vice Chairperson shall perform the duties assigned to the Secretary under this Law.

4.6. Preliminary Review – Oneida Business Committee

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. The Judiciary may request that the parties submit arguments in writing, and the parties may be represented by Counsel.

297 4.6-2. If the Judiciary determines that a petition does not allege sufficient grounds for removal,
298 the petition shall be dismissed. If the Judiciary determines that the petition alleges sufficient
299 grounds for removal, the Judiciary shall conduct a hearing under 4.7.

300 4.6-3. The Tribal ~~Secretary's~~Secretary's certification of the sufficiency of the number of
301 signatures on the petition may be reviewed by the Judiciary upon motion of the ~~elected~~
302 ~~official~~Oneida Business Committee member whose removal is sought. The motion ~~shall~~must be
303 filed within twenty (20) calendar days of service of the certified copy of the petition upon the
304 ~~elected official sought to be removed. The motion shall be in writing and the grounds limited~~
305 ~~to:~~Oneida Business Committee member sought to be removed. The motion must be in writing
306 and the grounds limited to the authenticity of the signatures.

307 4.6-4. This motion must be heard in the presence of the parties, who may be represented by
308 Counsel during the review. The Judiciary shall provide the parties the opportunity to present
309 evidence and testimony only as to the authenticity of the signatures. If the Judiciary determines
310 that a petition contains less than the required number of valid signatures, the petition shall be
311 dismissed and the matter shall be at an end.

312 (a) ~~the authenticity of the signatures, and~~

313 (b) ~~whether the signature is that of an eligible voter.~~

314 ~~4.6-4. The Judiciary review shall be conducted in the presence of the parties, who may be~~
315 ~~represented by counsel during the inspection. Opportunity to present evidence and testimony~~
316 ~~shall be provided. If the Judiciary determines that a petition contains less than the required~~
317 ~~number of valid signatures, the petition shall be dismissed.~~

318 ~~4.6-5. In the event the removal of a member of the Judiciary is sought, the Clerk of Courts shall~~
319 ~~convene a panel of three (3) judges who are members of the Wisconsin Tribal Judges~~
320 ~~Association to carry out the Judiciary's responsibilities under this law.~~

321

322 **4.7. Hearing – Oneida Business Committee**

323 4.7-1. *Rights of ~~Elected Official~~Oneida Business Committee Member at Hearing.* An ~~elected~~
324 ~~official~~Oneida Business Committee member whose removal is sought ~~shall have~~has the right to
325 present witnesses on his or her behalf; ~~to cross-examine adverse witnesses; and~~ to, at his or her
326 expense, be represented by Counsel of his or her choice.

327 4.7-2. *Burden of Proof.* A person seeking the removal of an ~~elected official shall have~~Oneida
328 Business Committee member has the burden of proving by clear and convincing evidence that
329 ground(s) for removal exist.

330 4.7-3. *Findings Decision.* The Judiciary shall, within twenty (20) calendar days after the
331 preliminary review ~~has been completed;~~ schedule a hearing to determine whether each allegation
332 of the petition has been proven by clear and convincing evidence, and whether such allegations
333 constitute sufficient grounds for removal under 4.4-1. If the Judiciary determines that sufficient
334 grounds have not been proven, the Judiciary shall dismiss the petition. If the Judiciary
335 determines that the sufficient grounds have been proven, the Judiciary shall forward the written
336 ~~findings~~decision to the Tribal ~~Chair~~Chairperson and or designee.

337

338 **4.8. Final Determination at General Tribal Council Meeting – Oneida Business Committee**

339 4.8-1. *Special Meeting.* ~~Upon receipt of~~ Within forty-five (45) calendar days of receiving the
340 ~~findings~~decision from the Judiciary, ~~the Tribal Chair shall call~~ a special General Tribal Council
341 meeting must be held to consider the ~~findings to be held within forty five (45) calendar days~~
342 ~~after receipt of the Judiciary findings~~decision.

343 | 4.8-2. *Right to address the Council.* An ~~elected official~~Oneida Business Committee member
344 | whose removal is sought ~~shall have~~has the right to address the General Tribal Council
345 | personally.

346 | 4.8-3. *Determination.* An ~~elected official~~Oneida Business Committee member may only be
347 | removed from office upon the affirmative vote of a two-thirds (2/3) majority of the General
348 | Tribal Council at a meeting called for the purpose of considering the removal.

349 | 4.8-4. *Quorum.* If the meeting of the General Tribal Council fails to obtain a quorum, the
350 | removal petition ~~shall~~must be dismissed.

351 |
352 | *End.*

353 | 4.8-5. *Non-appealable.* There is no appeal from the determination of the General Tribal
354 | Council.

355 | **4.9. Removal – Elected Official**

357 | 4.9-1. An Elected Official may be subject to removal either by petition or by request of the
358 | board, committee or commission, which must be filed with the Tribal Secretary’s Office within
359 | thirty (30) calendar days after:

360 | (a) the date the first signature is obtained on the petition; or

361 | (b) the board, committee or commission adopts the removal request.

362 | 4.9-2. Upon receipt of a petition or removal request, the Tribal Secretary shall promptly notify
363 | the Elected Official sought to be removed that a petition or removal request has been filed
364 | seeking his or her removal by providing a copy of the uncertified petition or removal request.

365 | 4.9-3. *Petitions.* Any eligible voter may file a petition with the Tribal Secretary seeking the
366 | removal of an Elected Official. No petition may request the removal of more than one (1)
367 | Elected Official. The petition must state with particularity the facts upon which it is based and
368 | the specific grounds for removal, in not more than three hundred (300) words, and must be
369 | signed by a number of eligible voters equal to at least thirty percent (30%) of the vote cast in the
370 | previous general election. The first signature on a petition must be done in the presence of the
371 | Secretary’s Office staff. Once a petition has the first signature, it cannot be amended.

372 | (a) The petitioner shall use an official petition form as designated by this Law which
373 | may be obtained through the Tribal Secretary’s Office. The petition must, at a minimum,
374 | include appropriate lines for the eligible voters’:

375 | (1) printed name;

376 | (2) signature;

377 | (3) street address; and

378 | (4) Oneida Tribal Enrollment Number.

379 | (b) The Tribal Secretary shall promptly submit such petition to the Oneida Tribal
380 | Enrollment Department which shall, within five (5) business days, verify whether the
381 | petition contains the requisite number of signatures of eligible voters.

382 | (1) If the Enrollment Department verifies that a petition does not contain the
383 | requisite number of signatures, the Tribal Secretary shall so certify to the Oneida
384 | Business Committee and file the petition without taking further action, the matter
385 | at an end for lack of requisite signatures. No additional names may be added to
386 | the petition, and the petition may not be used in any other proceeding.

387 | (2) If the Enrollment Department verifies that a petition contains the requisite
388 | number of signatures, the Tribal Secretary shall promptly cause a certified copy of
389 | the petition to be served upon the Elected Official sought to be removed and
390 | forward a copy of the same to the Judiciary.

391 4.9-4. Removal Requests. A board, committee, or commission may file a removal request for
392 one of its members with the Tribal Secretary after adoption of a majority vote of the board,
393 committee or commission regarding the removal request. No removal request may request the
394 removal of more than one (1) Elected Official. The removal request must state with particularity
395 the facts upon which it is based and the specific grounds for removal, in not more than three
396 hundred (300) words. A removal request may not be amended after it is filed with the Tribal
397 Secretary.

398 (a) Upon verification by the Tribal Secretary of the action the board, committee or
399 commission adopting the removal request, the Tribal Secretary shall promptly cause a
400 certified copy of the removal request to be served upon the Elected Official sought to be
401 removed and forward a copy of the same to the Judiciary.

402 (b) If the Tribal Secretary determines that a removal request does not meet the
403 requirements of 4.9-4, the Tribal Secretary shall so certify to the Oneida Business
404 Committee and file the removal request without taking further action, the matter at an end
405 for lack of valid action by the board, committee or commission.

406 **4.10. Preliminary Review – Elected Official**

407 4.10-1. The Judiciary, upon receipt of the petition or removal request, shall schedule a
408 preliminary review, to take place within twenty (20) calendar days, to determine whether the
409 allegations set forth in the petition or removal request would constitute sufficient grounds for
410 removal. The Judiciary may request that the parties submit arguments in writing, and the parties
411 may be represented by Counsel.

412 4.10-2. If the Judiciary determines that a petition or removal request does not allege sufficient
413 grounds for removal, the petition shall be dismissed. If the Judiciary determines that the petition
414 or removal request alleges sufficient grounds for removal, the Judiciary shall conduct a hearing
415 under 4.11.

416 4.10-3. The Tribal Secretary's certification of the sufficiency of the number of signatures on the
417 petition or the validity of the action of the board, committee or commission adopting a removal
418 request may be reviewed by the Judiciary upon motion of the Elected Official whose removal is
419 sought. The motion must be filed within twenty (20) calendar days of service of the certified
420 copy of the petition or removal request upon the Elected Official sought to be removed. The
421 motion must be in writing and the grounds limited to either of the following:

422 (a) the authenticity of the signatures on a petition; or

423 (b) the validity of the action taken by a board, committee or commission in approving a
424 removal request.

425 4.10-4. The motion must be heard in the presence of the parties, who may be represented by
426 Counsel during the review. The Judiciary shall provide the parties with the opportunity to
427 present evidence and testimony only as to the authenticity of the signatures and the validity of
428 the action taken by a board, committee or commission in approving a removal request. If the
429 Judiciary determines that a petition contains less than the required number of valid signatures, or
430 the action taken by a board, committee or commission in approving a removal request was
431 invalid, the Judiciary shall dismiss the petition and the matter shall be at an end.

432 **4.11. Hearing – Elected Official**

433 4.11-1. Rights of Elected Official at Hearing. An Elected Official whose removal is sought has
434 the right to present witnesses on his or her behalf; to cross-examine adverse witnesses; and to, at
435 his or her expense, be represented by Counsel of his or her choice.

438 4.11-2. *Burden of Proof.* A party seeking the removal of an Elected Official has the burden of
439 proving by clear and convincing evidence that ground(s) for removal exist.

440 4.11-3. *Decision.* The Judiciary shall, within twenty (20) calendar days after the preliminary
441 review has been completed, schedule a hearing to determine whether each allegation of the
442 petition or removal request has been proven by clear and convincing evidence, and whether such
443 allegations constitute sufficient grounds for removal under 4.4-2. If the Judiciary determines that
444 sufficient grounds have not been proven, the Judiciary shall dismiss the petition or removal
445 request. If the Judiciary determines that the sufficient grounds have been proven, the Judiciary
446 shall forward the written decision to the Tribal Chairperson and or designee.

447
448 **4.12. Final Determination at Oneida Business Committee Meeting – Elected Official**

449 4.12-1. *Special Meeting.* Within forty-five (45) calendar days of receiving the decision from the
450 Judiciary, a special Oneida Business Committee meeting must be held to consider the decision.

451 4.12-2. *Right to address the Oneida Business Committee.* An Elected Official whose removal is
452 sought has the right to address the Oneida Business Committee personally.

453 4.12-3. *Determination.* An Elected Official may only be removed from office upon the
454 affirmative vote of six (6) members of the Oneida Business Committee at a meeting called for
455 the purpose of considering the removal.

456 4.12-4. *Quorum.* If the meeting of the Oneida Business Committee fails to obtain a quorum, the
457 removal request must be dismissed.

458 4.12-5. *Non-appealable.* There is no appeal from the determination of the Oneida Business
459 Committee.

460
461 *End.*
462

463 Adopted GTC-01-09-06-A
464 Amended – BC-05-28-14-B

