# Oneida Tribal Judicial System

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**APPELLATE COURT**

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**Greg Matson,**
**Appellant**

**Docket No. 14-AC-010**

**v.**

**Oneida Election Board,**
**Respondent**

**Date: August 4, 2014**

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**DECISION**

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This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers Janice L. McLester, Pro Tem Richard Ackley, Lois Powless, Sandra Skenadore and Pro Tem James Van Stippen presiding.

## I. Background

This case arises out of a challenge by Greg Matson to the 2014 Oneida General Election results for the office of Chairperson. Mr. Matson was a candidate for the office of Chairperson of the Oneida Tribe of Indians of Wisconsin. The election was held on July 12, 2014. Matson claims his opponent Ms. Tina Danforth violated Oneida election law and that the outcome would have been different without the violation. We disagree and affirm the Trial Court's denial of Mr. Matson's claim.



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*A. Jurisdiction*

This case comes to us as an appeal of an original hearing body decision from the Oneida Tribal Judicial System Trial Court Division. Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under Sec. 1.8-1 of the Oneida Administrative Procedures Act. The Election Ordinance also specifically provides for an appeal in Sec. 2.11-11 as amended by GTC Resolution 01-04-10-A on January 4, 2010.

*B. Factual background*

Mr. Matson contends that on June 7, 2014 and June 28, 2014 Tina Danforth used tribal funds to attend candidate forums on those dates in Milwaukee, Wisconsin. She submitted a mileage reimbursement form showing that Ms. Danforth's assistant claimed mileage on these dates for trips to Milwaukee. There was no evidence presented at the trial court that showed why Ms. Danforth was in Milwaukee or even that she had received tribal money or benefited from it.

On July 12, 2014, the General Election was held; Tina Danforth received 838 votes while Mr. Matson received 811 votes.

Mr. Matson presented the election results from July 12, 2014 showing that Ms. Danforth received a higher percentage of the votes in Milwaukee than she did on the Oneida Reservation. More specifically, Ms. Danforth received 60 percent of the votes cast for Chair in Milwaukee and just under 50 percent of the votes cast for Chair on the Reservation.

Mr. Matson also introduced several anonymous letters that were circulated before the election which made, allegedly, false statements about both candidates.

*C. Procedural background*

On July 21, 2014, Mr. Matson filed his challenge under Sec. 2.11-11 which allows any qualified voter to challenge the election results within 10 calendar days after the election. A hearing was held on July 24, 2014. Mr. Matson did not call any witnesses. The only testimony provided was

his own.

The Trial Court issued a verbal decision on July 24, 2014 and written decision was issued on Tuesday, July 29, 2014. This appeal was originally timely filed on July 30, 2014. Mr. Matson was then issued a notice to perfect the appeal within 24 hours which he did on July 31, 2014.

## II. Issue

Did Mr. Matson show under Sec. 2.11-11(a) that a violation of Election Law occurred and that the outcome of the election would have been different but for the violation?

## III. Analysis

Mr. Matson has neither shown that a violation occurred nor that the outcome would have been different but for the alleged violation. Section 2.11-11(a) sets out the standard Mr. Matson must meet for a new election:

> The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.

Even if a violation is established, it must be shown to have changed the outcome before any remedy will be ordered. See e.g. *Webster v. Oneida Election Board*, 11-AC-019 (8/3/2011).

Mr. Matson has not shown the Election Law was violated. There was no eyewitness testimony that Ms. Danforth, nor her Assistant was at the candidate forums. There was no evidence that she improperly approved mileage for her Assistant going to Milwaukee. Mr. Matson failed to submit a mileage reimbursement sheet but does not tie it together with an election violation. For example, there was no evidence presented that the mileage reimbursement was, in fact, for mileage used to drive Ms. Danforth to Milwaukee for the candidate forum.

We are not saying whether the allegations are true or untrue. Rather, the Trial Court and now this Court cannot evaluate the allegations without admissible evidence. Without sufficient evidence, Mr. Matson cannot meet the "clear and convincing" requirement.

Likewise with respect to the second element, that the outcome of the election would have been different, there was not sufficient evidence presented. Mr. Matson makes an argument based on the difference between the primary and general election results that Ms. Danforth benefited by being in Milwaukee at the candidate forums. But this argument is speculation. There is no direct evidence that Ms. Danforth's presence in Milwaukee (if she was there) increased her vote total. This is something that would have been very difficult to prove. Mr. Matson did not offer any witness testimony or other evidence showing that had the alleged violation not taken place, a swing of 28 votes in Mr. Matson's favor would have occurred.

With respect to the anonymous letters, there is also a lack of evidence. It is not clear why these letters may be a violation of the Election Ordinance or why they might have created an unfair election. Were there statements in the letters that were untrue? Perhaps, but there was not sufficient evidence presented to draw conclusions. Did any voters change their minds as a result of the letters? We can't tell; no other individuals testified other than Mr. Matson. We have no way of knowing the impact of these letters on the election results. Even if they were illegal, did they alter the outcome? There is no sufficient evidence to say clearly and convincingly that was the case.

The Election Law leaves only the Election Board authority to impose fines should there be a violation of Section C Campaign Financing (b)*: Fines. Violation of the contribution restriction shall result in a fine imposed by the Election Board in an amount specified in a resolution adopted by the Business Committee*. No violation was proven, no evidence submitted.

Section D Challenges and Declaration of Results 2.11-11. Challenges leave a narrow window available to review at the Appellate level. *Any qualified voter may challenge the results of an*

*election by filing a complaint with the Oneida Appeals Commission within ten (10) calendar days after the election. The Oneida Appeals Commission shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Oneida Appeals Commission shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.* This restricted time line virtually denies the Respondent an opportunity to enter rebuttal arguments against allegations presented. In this case, the Respondent's Brief was submitted after the Appellate body deliberation and was not reviewed as part of the appeal.

## IV. Conclusion

The Trial Court decision is affirmed. Mr. Matson has shown neither a violation nor that the outcome of the election would have been different but for the alleged violations.