

SANCTIONS & PENALTIES LAW FAQs

The Legislative Operating Committee (LOC) developed frequently asked questions (FAQs) to serve as a tool and resource for anyone interested in learning more about the proposed Sanctions and Penalties law. This document provides responses to questions the LOC anticipates members of the community may have regarding this proposed legislation. For additional information and to view the draft law, please go to:

<https://oneida-nsn.gov/government/register/featuredlegislation/>

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1. What happened on March 17, 2019, when the General Tribal Council considered the Sanctions and Penalties law?

On March 17, 2019, the Sanctions and Penalties law was presented to the General Tribal Council. After much discussion on this item there was a motion by Becky Webster to adopt the resolution entitled Sanctions and Penalties Law on pages five (5) and six (6) of the meeting packet; with the amendment to the law to limit those who have standing to file a complaint to Tribal Members only. This motion was seconded by Jamie Willis. This motion was not voted on; instead the item was deferred due to an amendment on the motion.

The amendment to the main motion was made by Mike Debraska to defer item IV.A. for at least sixty (60) days for GTC to have additional time to consider it and have input. This motion was seconded by Tina Danforth. The motion carried by show of hands.

In an effort to comply with General Tribal Council's directive to provide additional time to consider the Sanctions and Penalties law and have input, the Legislative Operating Committee will be holding the following community outreach events:

DATE	TIME	LOCATION
July 11, 2019	Prior to General Tribal Council Meeting from 5:00 pm —6:00 pm	Radisson Hotel & Conference Center
July 17, 2019	12:00pm-1:00pm	Norbert Hill Center Business Committee Conference Room
August 9, 2019	8:00am-9:00am	Oneida Veteran's Breakfast Vets Office, Riverdale Dr, Oneida
August 15, 2019	12:00pm-3:00pm	Oneida Farmer's Market Water Circle Place, Oneida

Additionally, the Legislative Operating Committee will be accepting written submissions of comments or input on the proposed Sanctions and Penalties law until August 31, 2019. Written comments can be submitted via e-mail to LOC@oneidanation.org or in person to the Legislative Reference Office located in the Norbert Hill Center.

2. What outreach efforts has the Legislative Operating Committee made throughout the development of the Sanctions and Penalties law?

The Legislative Operating Committee has made a variety of various outreach efforts through the development of this Law including:

- *Work Meeting with Elected and Appointed Officials.* The Legislative Operating Committee invited all elected and appointed members of boards, committees, and commissions of the Nation to attend a work meeting on November 1, 2017, for the purpose of providing input on the development of a Sanctions and Penalties law.
- *Community Meeting.* On May 3, 2018, the Legislative Operating Committee held a community meeting potluck for the purpose of providing an opportunity for members of the community to discuss and provide input on the proposed Sanctions and Penalties law.
- *Public Meeting.* On October 4, 2018, the Legislative Operating Committee held a public meeting on the proposed Sanctions and Penalties law. During the public meeting members of the community are invited to come and provide comments and/or suggestions, or ask questions on the proposed law.
- *Public Comment Period.* In addition to the public meeting, the Legislative Operating Committee held open a public comment period until October 11, 2019. During this public comment period individuals can provide written comments to the Legislative Operating Committee.
- *Kalihwisaks Article.* The Legislative Operating Committee published an article in the February 7, 2019, Kalihwisaks edition regarding the proposed Sanctions and Penalties law. The purpose of this article was to inform the community that this item would be on an upcoming General Tribal Council meeting agenda and to educate the community on the purpose of this law.
- *Sanctions and Penalties Law Informational Video.* The Legislative Operating Committee filmed an informational video for the Sanctions and Penalties law. This video was posted to the Nation's Facebook on February 21, 2019. The purpose of this video was to inform the community that this item would be on an upcoming General Tribal Council meeting agenda and to educate the community on the purpose of this law. The Facebook video included a link to our website where these Frequently Asked Questions, Kalihwisaks article, legislative analysis, and draft of the law are available. This video was viewed nearly four thousand (4,000) times.

On March 17, 2019, the General Tribal Council directed that the consideration of the Sanctions and Penalties law be deferred for at least sixty (60) days for the General Tribal Council to have additional time to consider it and have input. Since then, the Legislative Operating Committee has committed to providing more opportunity for input and has scheduled various community outreach events.

The Legislative Operating Committee published a community outreach event notice in the July 3, 2019, Kalihwisaks edition. The Legislative Operating Committee will be holding the following community outreach events:

DATE	TIME	LOCATION
July 11, 2019	Prior to General Tribal Council Meeting from 5:00 pm —6:00 pm	Radisson Hotel & Conference Center
July 17, 2019	12:00pm-1:00pm	Norbert Hill Center Business Committee Conference Room

August 9, 2019	8:00am-9:00am	Oneida Veteran's Breakfast Vets Office, Riverdale Dr, Oneida
August 15, 2019	12:00pm-3:00pm	Oneida Farmer's Market Water Circle Place, Oneida

In addition to the community outreach events, the Legislative Operating Committee will also be offering the additional opportunity to provide comments and input through written submissions. The LOC will be accepting written thoughts and comments from the community until August 31, 2019. Written comments can be submitted via e-mail to LOC@oneidanation.org or in person to the Legislative Reference Office located in the Norbert Hill Center.

3. Why did the LOC develop a Sanctions and Penalties law?

If an official engages in misconduct while in office, the only remedy available for the Nation's membership to hold that official accountable is removal pursuant to the Removal law for elected officials, and termination of appointment by the Oneida Business Committee pursuant to the Boards, Committees, and Commissions law for appointed officials.

Not every instance of misconduct will rise to the level of removal, but every instance of misconduct should still be addressed because accountability is important for good governance. The Nation's membership does not currently have any process to issue warnings, reprimands, suspensions, or other corrective actions against officials.

Records show that for more than twenty (20) years the GTC and Oneida Business Committee have discussed addressing this issue by creating a sanctions and penalties process for officials.

In July 2016, during a special election, a referendum was on the ballot. The question was "Should the BC develop a law which provides for sanctions and due process for elected officials?" This referendum was approved by the voting membership by a vote of 178 in favor to 59 opposed.

Finally, after many years of discussion and development, a Law has been created and is ready for GTC's consideration. This Sanctions and Penalties law will provide the Nation's membership a process for filing complaints against officials, while also providing officials the opportunity to take accountability for their actions, correct their behavior, and become better officials.

4. Why should GTC consider and take action on the Sanctions and Penalties law?

GTC should consider and take action on the proposed Sanctions and Penalties law because it is the responsibility of the GTC to consider the adoption of the Sanctions and Penalties law.

The Law was developed in accordance with all requirements of the Legislative Procedures Act (LPA) which was established by GTC. The LPA sets the process to be used when adopting laws

of the Nation. As authorized by the LPA, the GTC will be asked to consider the adoption of this law.

As the governing body of the Nation, GTC should consider the adoption of the Law and take action on this item. Consideration can include many things, including a vote to support the adoption of this law, a vote to reject it, or a motion to defer the Law back to the LOC for changes as directed by the GTC.

GTC should discuss the Sanctions and Penalties law as soon as possible, in an effort to not halt discussion and further consideration or action on this item.

The LOC brought forth this Law because the Nation is lacking a process to address misconduct of officials before removal of that official is sought. Twenty (20) years of discussion on a need for this process motivated the LOC to finish the development of this Law for GTC's consideration.

Additionally, the positive referendum during the 2016 Special Election requires the Oneida Business Committee to present this idea to the General Tribal Council for consideration.

For all of those reasons, the GTC should take action on the consideration of the adoption of this Law.

5. What about the 2016 referendum regarding a sanctions law?

[see section 102.12-9 of the Election law]

In July of 2016, during a special election, a referendum for consideration by the Nation's voting membership was on the ballot. A referendum allows a voter to indicate opinions on any question, development, law, or resolution that is proposed.

The referendum question was "Should the BC develop a law which provides for sanctions and due process for elected officials?"

This referendum was approved by the voting membership by a vote of 178 in favor to 59 opposed.

Although the results of a referendum question are not binding, referendum questions that receive a majority of the cast votes from qualified voters shall be binding on the Oneida Business Committee to present the referendum issue for action or decision at a General Tribal Council meeting.

The presentation of the proposed Sanctions and Penalties law meets this requirement.

6. Why are appointed and elected officials treated differently?

In 2006 when the General Tribal Council adopted the current Removal law, the General Tribal Council adopted a resolution that determined that it is more logical to have different processes to

address the removal of elected and appointed officials because they come into office in a different manner. *[see resolution GTC-01-09-06-A]*.

This same thought process was used when determining how to address sanctioning elected and appointed officials. Because elected and appointed officials come into office in different manners, and ultimately can be removed from office in different manners, the LOC determined it would be more appropriate to address sanctions for elected and appointed officials separately.

7. Why does the Oneida Business Committee hear complaints against appointed officials?

[Process for complaints against appointed officials found in section 120.6 of the Law]

OBC Already Has Discretion to Terminate Appointed Members:

A person that is appointed to his or her position by the Oneida Business Committee serves at the discretion of the Oneida Business Committee. By serving on a board, committee, or commission those individuals are acting as an extension of the Oneida Business Committee.

Under the current Boards, Committees, and Commissions law, the Oneida Business Committee can terminate the appointment of an individual at any time, with a 2/3 majority vote. If the Oneida Business Committee can terminate the appointment of a person at any time, then the Oneida Business Committee should also be able to sanction an individual and use corrective action to address the misconduct of that official. The ability to address the misconduct of an individual through sanctions may prevent the need to terminate the appointment of that individual.

For that reason, the LOC made the decision to delegate the authority to hear complaints alleged against appointed officials to the Oneida Business Committee.

Prevents Forum Shopping:

Additionally, having the Oneida Business Committee handle complaints against appointed officials prevents “forum shopping.”

If complaints against appointed officials were handled by the Trial Court like complaints against elected officials are, then a situation could arise where a person files a complaint with the Trial Court but does not like the decision of the Trial Court so they decide to ask the Oneida Business Committee to consider the termination of that individual.

In order to prevent disciplinary action from being taken against an appointed official by two entities, the LOC decided to consolidate all decision making regarding appointed officials with the Oneida Business Committee.

8. Will the Oneida Business Committee handle complaints against other Oneida Business Committee members?

[Process for complaints against elected officials found in section 120.7 of the Law]

No, the Oneida Business Committee does not hear complaints alleged against other Oneida Business Committee members. Members of the Oneida Business Committee are elected by the Nation's membership. Therefore, complaints alleged against a member of the Oneida Business Committee will be handled by the Judiciary Trial Court.

The Oneida Business Committee will not handle complaints against any elected official. The Oneida Business Committee will only handle complaints alleged against appointed officials.

The Oneida Business Committee was delegated the authority to handle complaints against appointed officials because the Oneida Business Committee has the responsibility to appoint those officials who then serve at the OBC's discretion, in addition to the responsibility to terminate the appointed official if necessary.

9. Where in the Constitution does the Oneida Business Committee have the authority to hear complaints alleged against appointed officials?

[see Article IV, Section 1 of the Oneida Nation Constitution]

[see section 105.7 of the Boards, Committees, and Commissions law for provisions regarding appointed officials]

The Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Constitution and Bylaws of the Oneida Nation by the Oneida General Tribal Council.

Additionally, the Oneida Business Committee has already been delegated the authority and responsibility to appoint individuals as members to certain boards, committees, and commissions, as well as the responsibility and authority to terminate the appointment of an individual if necessary. This delegation of authority has been present in the Boards, Committees, and Commissions law for many years.

If the Oneida Business Committee can terminate the appointment of a person at any time, then the Oneida Business Committee should also be able to sanction an individual and use corrective action to address the misconduct of that official, in an effort to prevent the need to terminate the appointment.

10. Why does the Judiciary Trial Court hear complaints against elected officials?

[Process for complaints against elected officials found in section 120.7 of the Law]

The Judiciary Trial Court has been delegated the authority to hear complaints of alleged misconduct conducted by elected officials. Because these officials were elected by the Nation's

membership to hold his or her position, the Legislative Operating Committee determined it was most appropriate for the Judiciary Trial Court to hear those complaints.

The General Tribal Council created the Nation's Judiciary to serve as the independent judicial body authorized hearing authority on behalf of the Nation.

11. Why do complaints against officials not come before the GTC for a decision?

Complaints alleged against elected and appointed officials do not come before the General Tribal Council because the General Tribal Council has delegated this responsibility to other entities of the Nation.

The General Tribal Council created the Judiciary for this very purpose – to serve as the hearing authority for the Nation. Additionally, the Oneida Business Committee has already been delegated the authority to appoint and terminate appointed officials.

Additionally, the General Tribal Council delegated the authority of Article IV, Section 1, of the Constitution and Bylaws of the Oneida Nation to the Oneida Business Committee.

Although complaints do not come before the General Tribal Council for consideration, the decisions of the Trial Court or Oneida Business Committee regarding complaints alleged against an official and any sanctions or penalties imposed against an official will be public information. *[see section 120.5-7(c) of the Law]*.

The Nation's Boards, Committees, and Commissions law also requires that every board, committee, or commission of the Nation provide information on the number of substantiated complaints against members to the General Tribal Council in the annual and semi-annual reports. *[see section 105.12-4(a) of the Boards, Committees, and Commissions law]*.

Additionally, sanctions such as verbal reprimands and public apologies will occur in public at either an Oneida Business Committee or General Tribal Council meeting, and written reprimands will be published in the Kalihwisaks.

12. Recusal – What happens if a BC Member or Judge has a conflict of interest?

If an OBC member or a Judge has a conflict of interest with a complaint brought before himself or herself, then they are required by law to recuse themselves.

For Oneida Business Committee members:

[See section 120.6-5 of the Law]

The Law requires an Oneida Business Committee member who has a conflict of interest with a complaint brought before the Oneida Business Committee to immediately recuse himself or herself and not participate in any portion of the complaint process.

If the Oneida Business Committee member fails to recuse themselves due to a conflict of interest, then they can be sanctioned.

For Judges:

[See section 2.2 of the Oneida Tribal Judiciary Canons of Judicial Conduct]

The Oneida Tribal Judiciary Canons of Judicial Conduct requires a Judge to withdraw from any matter where the Judge has or could be perceived to have a conflict of interest.

Violating the Oneida Tribal Judiciary Canons of Judicial Conduct would be grounds for reprimand under the Nation's Judiciary law.

13. Resignation – What happens if an official resigns before investigation is complete?

[See section 120.9 of the Law]

If an official resigns from his or her position after a complaint has been filed against the official, the resignation will not affect the status of the hearing or the determination by either the Oneida Business Committee or the Judiciary Trial Court.

The official who resigns may still be subject to sanctions at the discretion of the Oneida Business Committee or Trial Court.

14. What does “clear and convincing evidence” mean?

[See section 120.3-1(e) of the Law]

The Law provides that “clear and convincing evidence” means that it is substantially more likely than not that the facts presented are true.

This is a higher standard of burden of proof than is normally required by the Judiciary Trial Court. The Trial Court normally defaults to a preponderance of the evidence standard, unless specified otherwise. Preponderance of the evidence means there is a greater than 50% chance that the claim is true.

The “clear and convincing evidence” standard is what is used for disciplinary hearings for Judges. *[See section 801.12-6(c) of the Judiciary law].*

15. Why does the Sanctions and Penalties law not apply to Judges?

[See section 120.1-1(b) of the Law]

The Sanctions and Penalties law does not apply to the Oneida Nation Judiciary.

This Law does not apply to Judges because the Nation's Judiciary law already provides for the reprimand, suspension and removal of judges. *[See section 801.12 of the Judiciary law]*.

16. Why does the Law not apply to corporate boards?

[See section 120.1-1(c) of the Law]

The Sanctions and Penalties law does not apply to members of corporate entities of the Nation.

The Law does not apply to corporate boards of the Nation because corporate entities are separate from governmental functions of the Nation.

Each corporation's charter or bylaws include provisions governing the removal of corporate board members or agents.

17. How are frivolous complaints handled?

For appointed officials:

[see section 120.6-6(c)(2)(A) of the Law]

If during the initial review of a complaint by the Oneida Business Committee, it is determined the complaint has no merit and should be dismissed based on the fact that the complaint was frivolous, false, or made with a malicious intent the Oneida Business Committee can hold the person who made the frivolous complaint accountable.

The Law allows the Oneida Business Committee to a fine the person who made the frivolous complaint, or prohibit the person from filing another complaint for a period of time. The Law also allows the official who was wrongly accused to file a civil suit in the Nation's Trial Court for the frivolous, false or malicious allegation.

This provision was included in the Law in an effort to discourage people from making false, frivolous, or malicious complaints.

For elected officials:

[see section 803.8-2 and 803.8-3 of the Oneida Judiciary Rules of Civil Procedure]

The process for how a complaint against an elected official is handled is provided for in the Oneida Judiciary Rules of Civil Procedure.

The Rules of Civil Procedure requires that when a person presents a complaint to the Trial Court they are certifying that to the best of their knowledge the claim they are presenting was not made for any improper purpose, the claim was warranted by existing law, the claim was non-frivolous, and the claim is supported by evidence.

If a person presents an improper representation (i.e. files a frivolous or false complaint) to the Trial Court, the Trial Court can impose a sanction against that person.

18. What is the cost of filing a complaint?

For complaints against appointed officials:

There is no filing fee associated with filing a complaint against an appointed official.

For complaints against elected officials:

The Judiciary sets the fees associated with filing a complaint with the Trial Court. It would be up to the discretion of the Judiciary to determine how much filing a complaint under this Law would cost. The cost of filing a general civil case is currently fifty dollars (\$50).

The Judiciary does allow for people to request filing fees to be waived. The Judiciary can waive the filing fee if the person provides the fee waiver request form and proof of economic hardship. Economic hardship can be based on unemployment, health or medical reasons, indigency, or other reasons.

19. Why is there a 90-day limitation on filing complaints?

[see section 120.5-2 of the Law]

A person can file a complaint against an elected or appointed official as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

The LOC included this provision in the Law to ensure that allegations of misconduct are addressed in a timely manner. Requiring complaints to be made within this timeframe will result in more effective and efficient hearings of the complaint. Additionally, this ensures the official is provided a prompt opportunity to take accountability and correct their behavior, which may lead to the behavior not being repeated in the future.

20. How are the due process rights of an official protected?

It is important when providing a process to file complaints against officials, the due process rights of the official are protected.

Due process focuses on fairness, and in order for the due process rights of an official to be maintained the official needs to be noticed and have the opportunity to be heard during the complaint against them.

The Law protects the due process rights of officials of the Nation in the following ways:

- An official is allowed to be represented by an attorney or advocate *[see section 120.5-6 of the Law]*;

- Reminder: the Nation has a Legal Resource Center with two (2) advocates who can represent elected and appointed officials. There is no fee associated with obtaining the representation of a Legal Resource Center advocate – you are just responsible for the court costs.
- Officials are noticed when a complaint is received and have a right to submit a written response or answer to complaints against them. *[see section 120.6-4 of the Law, and section 803.7 of the Rules of Civil Procedure];*
- Officials have a right to appear at the hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf *[see section 120.6-8 of the Law – and Rules of Civil Procedure for elected officials court process];*
- Complaints against officials must be proven by clear and convincing evidence *[see section 120.6-10 and 120.7-2 of the Law];*
- Officials are allowed to appeal decisions of the Oneida Business Committee or Trial Court to the Nation’s Court of Appeals. *[see section 120.6-11 and 120.7-4 of the Law].*

21. Confidentiality – Will hearings be open to the public? Will results be public record?

[see section 120.5-7 of the Law]

The Law requires that all complaints be handled in a confidential manner. All hearings and proceedings related to the complaint will be closed to the general public. Records of the hearings and proceedings will not be subject to public review or inspection.

However, the final decision of the Trial Court or Oneida Business Committee regarding the complaint alleged against an official, and any sanctions or penalty imposed against that official will be public information.

Additionally, sanctions such as verbal reprimands and public apologies will occur in public at an Oneida Business Committee or General Tribal Council meeting, and written reprimands will be published in the Kalihwisaks.

22. What are the stipend amounts for elected and appointed officials?

[see section 105.13 of the Boards, Committees, and Commissions law]

The Nation’s Boards, Committees, and Commissions law provides that the Oneida Business Committee will set stipend amounts for boards, committees, and commissions of the Nation by resolution.

The Oneida Business Committee adopted resolution BC-05-08-19-B which sets forth specific amounts allowed to be paid to a member of a board, committee, or commission for various reasons.

For specific stipend amounts see resolution BC-05-08-19-B located on the Nation's website at: <https://oneida-nsn.gov/dl-file.php?file=2019/05/05-08-19-B-Amending-Resolution-BC-09-26-18-D-Boards-Committees-and-Commissions-Law-Stipends-1.pdf>

23. Why does the law allow non-tribal members to file complaints against elected and appointed officials?

[see section 120.5-1 of the Law]

The Law allows any individual at least eighteen (18) year of age or older who in good faith has knowledge or reason to believe that an official has committed misconduct to file a complaint. This does mean that a non-tribal member could file a complaint.

Elected and appointed officials of the Nation have many interactions with employees of the Nation – many of which are not tribal members. Therefore, the LOC determined that those non-tribal members should still have the opportunity to file a complaint. The goal of this law is to prevent misconduct of officials – no matter who that misconduct is against.

Additionally, by filing a complaint under the Sanctions and Penalties law, the non-tribal member would be submitting to the jurisdiction of the Nation.

24. Why are we creating a law that allows one tribal member to sue the other tribal member in court?

[see section 801.1-2 of the Judiciary law]

The General Tribal Council adopted the Judiciary law as the next step in formalizing the hearing authority of the Oneida Nation in an independent judicial body. The membership then approved amendments to the Constitution which adopted Article V, Judiciary, which established “a judiciary to exercise the judicial authority of the Oneida Nation.” General Tribal Council adopted resolution GTC-03-19-17-A which designated the Oneida Judiciary as the judiciary authorized pursuant to Article V of the Constitution.

The Judiciary law provides that the policy of the Nation to provide a fair and impartial forum for the resolution of all matters that come before it pursuant to a grant of authorization by law. *[8 O.C. 801.1-2]*. The Sanctions and Penalties law will grant the Judiciary the authority to hear complaints alleged against elected officials.

The LOC determined that we should allow people the opportunity to seek the resolution of a complaint with the Judiciary, as this is what the Judiciary was created for.