

# Oneida Appeals Commission

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## Trial Court

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Matthew J. Denny, et al,  
Petitioners

Docket No. 03-TC-001

vs.

Oneida Business Committee,  
Respondent

Date: July 28, 2003

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## Decision

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This case has come before the Oneida Appeals Commission, Judicial Officers Leland Wigg-Ninham, Mary Adams and Marjorie Stevens presiding.

### I Background

On February 18, 2003, the Petitioner, Matthew Denny and twenty eight Oneida employees filed an original complaint against the Respondent, Oneida Business Committee, for public release of private and confidential information. The Petitioners allege that on July 31, 2002, at a formal meeting of the Oneida Business Committee, thirty one Oneida Human Resources employees' incentives were discussed. The Petitioners allege that a master employee maintenance form was handed out to the Oneida Business Committee members which included each employee's name, telephone number, social security number and the dollar amount of the incentive. The Petitioners claim that the information was based upon a written request by the Tribal Treasurer, Judy Cornelius, dated July 30, 2002. The Petitioners further allege the following: (1) that twenty nine employees stated that they gave no consent for the release of this information; (2) that the release of the information has caused them much apprehension; and (3) they have heard reports from various tribal sources that the confidential information had been passed among tribal members.

The Petitioners allege that their privacy and confidentiality as well as the Regulatory Law of the Oneida Nation has been broken by the release of this information to the public.

## II Issues

**Does the Oneida Tribe of Wisconsin have sovereign immunity in this matter?**

## III Analysis

**Does the Oneida Tribe of Wisconsin have sovereign immunity in this matter?**

The Oneida Business Committee contends that they are protected by sovereign immunity in this matter because they were functioning as a representative body of the tribe at the time of the incident on July 31, 2002. The Respondents further contend that the Petitioners have failed to establish a right to relief in this case because they have not shown that the Tribe's sovereign immunity has been revoked.

As the Legislative Branch of the Oneida Government, the Business Committee was established by the Oneida Constitution and is therefore generally immune from suit. In the case, William Gollnick vs. Debra Powless, et al, 6 O.N.R. 3-23 (00-AC-0003, 2/14/00), the Oneida Appeals Commission ruled:

*The Business Committee is the representative government of the Oneida Nation. Its members are elected by the population and benefit from privileges common to elected officials. The individual members of the Business Committee are immune from suit when acting in their capacity, though official actions of the Business Committee may be challenged or overturned through established procedures.*

The Respondent requested a Motion to Dismiss based on the Oneida Business Committee's status of sovereign immunity. This court agrees with the Respondent's contention that they are immune from suit, so long as the Oneida Business Committee is working in their official capacity. According to Blacks Law Dictionary, Sovereign Immunity is:

*A judicial doctrine which precludes bringing suit against the government without its*

*consent. It bars holding the government or its political subdivisions liable for torts of its officers or agents unless such immunity is expressly waived by statute or by necessary inference from legislative enactment.*

This court supports the Respondent's contention that the Oneida Business Committee is the government of the Oneida Nation in Wisconsin and that the Oneida Business Committee did not waive its sovereign immunity. The Petitioners did not provide documentation to prove that the Oneida Business Committee waived their sovereign immunity. The Petitioners have failed to show how the former Treasurer and Oneida Business Committee members have acted outside the scope of their authority. Furthermore, the Petitioners have failed to prove to this court that the Oneida Business Committee is not protected under sovereign immunity.

The Petitioners raise the State of Wisconsin Statutes §895.50 in their invasion of privacy claim.<sup>1</sup> In the legal sense, many departments within an organization share individual's personal information so long as that information is used for the purpose of organizational management. The Tribal Treasurer enjoys immunity from suit, as most judges and elected officials when they are working in their official capacity.

According to Black's Law Dictionary 6<sup>th</sup> Edition, the federal Privacy Act (5 U.S.C.A. §552a), Privacy Laws;

"The Act permits an individual to have access to records containing personal information on that individual and allows the individual to control the transfer of that information to other Federal agencies for nonroutine uses."

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1. Right to Privacy. (2) In this section, "invasion of privacy" means any of the following: (a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass. (c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record. (3) The right of privacy recognized in this section shall be interpreted in accordance with the developing common law of privacy, including defenses of absolute and qualified privilege, with due regard for maintaining freedom of communication, privately and through the public media. (4) Compensatory damages are not limited to damages of pecuniary loss, but shall not be presumed in the absence of proof.

According to the Oneida Constitution, Article I, Duties of Officers, §4. Treasurer of Council, the Treasurer is to preserve and safeguard all funds in the custody of the Council. It only seems reasonable that the Tribal Treasurer has a fiduciary responsibility to call into question the expenditures of each department and bring such action to the attention of the Oneida Business Committee. Incentives are departmental expenditures. The Tribal Treasurer discussed the Oneida Human Resources incentive payments in an Oneida Business Committee meeting. All Oneida Business Committee meetings are public unless it is held in executive session. There is no documentation indicating whether this meeting was public or held in executive session. If the meeting was held at a regularly scheduled meeting, packets containing all information are only available to Directors and Area Managers or special request. Therefore, everyone attending the public meeting is not provided all the material. The documentation supporting the Tribal Treasurer's claim contained the names and social security numbers of the individuals may be permitted. According to the Federal Privacy Act, provided that the information is transferred to other federal, in our case tribal, agencies for nonroutine use. The list of individuals who received employee incentives became the Tribal Treasurer's evidence and was shared among the Oneida Business Committee in an effort to support her claim.

Previously, when the Tribe's profits declined the Tribal Treasurer suspended travel, salary increases, equipment purchases, etc., for all departments with the approval of the Oneida Business Committee. If there is a question as to whether a department is violating a policy, it seems reasonable that the Tribal Treasurer would bring it to the attention of the Oneida Business Committee for final consultation. The Petitioners failed to prove the Tribal Treasurer acted outside of her scope of authority. The Petitioners failed to prove the Oneida Business Committee waived its sovereign immunity and therefore all other issues are moot.

#### **IV Decision**

The Respondent's Motion to Dismiss is granted. All other requests for relief is denied.