

# Oneida Appeals Commission

Onayote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

Phone: 920-497-5800

Fax: 920-497-5805

Post Office Box 19

Oneida, WI 54155



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## Trial Court

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Arlouine Bain  
Petitioner

v.

Docket No. 04-TC-096

Date: March 22, 2005

Oneida Personnel Commission  
Respondent

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## Final Decision

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This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Leland Wigg-Ninham, Jennifer Webster, and Linda Cornelius presiding.

### I Background

Petitioner, Arlouine Bain, filed a claim against the Oneida Personnel Commission. Ms. Bain claims four grievances against the Oneida Personnel Commission. Those grievances are: Disclosure of Protected Material, Failure to Follow Own Rules, Tampering with Sworn Testimony, and Inappropriate Treatment of Witnesses. Ms. Bain is asking for monetary compensation for the alleged damages: defamation of character, harassment and humiliation, a retraction of the false and misleading statements made in the Powless vs. Bain case, and an apology letter to Ms. Bain, Mr. Rick Cornelius (Chief of Police), and Mr. Pat Pelky (Governmental Services).

Ms. Bain has attempted to resolve her concerns with the Personnel Commission and the Oneida Business Committee with no remedy. Ms. Bain then filed a claim against the Oneida Personnel Commission.

## **II Issues**

Can the Oneida Personnel Commission be a named party in a suit?

## **III Analysis**

No. Sovereign immunity and judicial immunity bar the Oneida Personnel Commission from being a named party in a suit.

### **Sovereign immunity:**

The Oneida Personnel Commission (hereafter OPC) is considered a tribal entity according to Oneida Nation Code of Law, Sovereign Immunity Ordinance, Chapter 14.3-1(d). Tribal entity is defined as:

[a] corporation or other organization which is wholly owned by the Oneida Tribe of Indians of Wisconsin, is operated for governmental or commercial purposes, and may through its charter or other document by which it is organized be delegated the authority to waive sovereign immunity.

The OPC is operated for governmental purposes. The OPC hears employee disputes which are critical to day-to-day operations of the tribe.

Chapter 14.4-2 defines Sovereign Immunity of Tribal Entities as:

The sovereign immunity of Tribal Entities, including sovereign immunity from suit in any state, federal or tribal court, is hereby expressly reaffirmed. No suit or other proceeding, including any tribal proceeding, may be instituted or maintained against a Tribal Entity unless the Tribe or the Tribal Entity has specifically waived sovereign immunity for purposes of such suit or proceeding. No suit or other proceeding, including any tribal proceeding, may be instituted or maintained against officers, employees or agents of Tribal Entity for actions within the scope of their authority, unless the Tribe or Tribal Entity has specifically waived sovereign immunity for purposes of such suit or proceeding.

The OPC is a Tribal Entity, and therefore a suit against them can not be maintained because of

sovereign immunity. The suit may also not be heard in a tribal venue, such as the Oneida Appeals Commission, as long as the OPC was acting within their scope of authority and the Tribe or Tribal Entity has not waived sovereign immunity.

The role of the OPC is to resolve employee disputes. The OPC acts as a judicial body and renders a decision based on the facts presented. The OPC was acting within their scope of authority when they published decisions on *Scott Murray v. Patrick Pelky*, Docket No. not stated on September 29, 2004 decision, *John Powless III v. Arlouine Bain*, Docket No. 03-TER-018, and *Lillian Wheelock v. Arlouine Bain*, Docket No. 03-TER-017.

In Chapter 14-5.1(b), immunity can only be waived in the following ways:

- (1) by resolution of the General Tribal Council;
- (2) by resolution or motion of the Oneida Business Committee;
- (3) by resolution of a Tribal Entity exercising authority expressly delegated to the Tribal Entity in its charter or by resolution of the General Tribal Council or the Oneida Business Committee, provided that such waiver shall be made in strict conformity with the provisions of the charter or the resolution governing the delegation, and shall be limited to the assets and property of the Tribal Entity.

The OPC did not have its sovereign immunity waived by the General Tribal Council, the Oneida Business Committee, or by the OPC itself, therefore sovereign immunity was not waived and it remains intact. The OPC was acting within its scope of authority and did not have their sovereign immunity waived, therefore the OPC is not subject to suit.

**Judicial Immunity:**

The issue of judicial immunity of the Personnel Commission was defined in *Oneida Division of Land Management v. Jeremy Jourdan*, #97-EP-0003, April 4, 1997. In *Jourdan*, the OPC did not hold a hearing at the proper time which caused more money to be owed to the respondent.

The appellate body reasoned that judicial immunity exists to protect people functioning in a

judicial capacity. *Oneida Division of Land Management v. Jeremy Jourdan*. 3 O.N.R. 3-38. In addition, immunity was created to ensure that governmental officials would be free to act within their authority in an objective manner. *Id.* In conclusion, the Oneida Appeals Commission ruled that the OPC does benefit from judicial immunity. *Id.* at 3 O.N.R. 3-39.

#### **IV Decision**

The Oneida Personnel Commission enjoys both sovereign immunity and judicial immunity, while acting in the scope of their authority and immunity has not been waived, no claim against them may be initiated through this hearing body. Since sovereign immunity applies, the issues Ms. Bain raises can not be addressed by this hearing body. Although this hearing body can not address these issues there are other avenues the Petitioner can pursue such as the Removal Law, Code of Ethics, and APA which all Elected and Appointed officials are subject to.

##### Removal Law 4.1-1.

*The purpose of this law is to govern the removal of persons appointed and elected to serve the Oneida Tribe of Indians of Wisconsin on boards, committees, and commissions, including the Oneida Business Committee.*

##### Code of Ethics 3.1.1.

*Policy and Purpose; It is the policy of the Oneida Tribe of Indians of Wisconsin to promote the highest ethical conduct in all of its elected and appointed officials, and employees.*

##### APA; I. Authority:

*The Oneida Tribe of Indians of Wisconsin has the authority to enforce this act as well as the responsibility as a government to protect the health, safety, welfare, and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the reservation.*