

---

---

**Appellate Court**

---

---

Lester Harms,

Appellant

Docket No. 03-AC-029

vs

Dave Clucky, MIS Department,  
Janice Hirth, Oneida General Manager,  
Geraldine Danforth, HRD,  
Respondent

Date: April 28, 2004

---

---

**Remand**

---

---

This case has come before the Oneida Appeals Commission, Judicial Officers Leland Wigg-Ninham, Linda Cornelius, Gary G. Metoxen, Marjorie Stevens, and Winnifred L. Thomas presiding.

**I. Background**

This case is an appeal of the original Hearing Body's order to dismiss Docket No. 03-TC-330. On July 11, 2002, the Appellant applied for the position of Assistant Oneida Management Information Systems Manager Trainee. The Appellant alleges he received no response to this application. The Appellant was laid off from the MIS Department on December 31, 2002. On August 14, 2003 the Appellant filed an injunction and complaint. On August 18, 2003, the injunction was denied and accepted as a contested case by the Oneida Appeals Commission. On September 15, 2003, the Respondent filed a motion to dismiss, claiming sovereign immunity. A hearing was held on November 11, 2003 and the court dismissed the case and ruled in favor of the Respondent, finding that sovereign immunity prevailed. On November 18, 2003, the Appellant filed an appeal of that decision.

**II. Issues**

**Did the Trial Court erroneously dismiss the case finding that sovereign immunity prevailed?**

**III. Analysis**

**Did the Trial court erroneously dismiss the case finding that sovereign immunity prevailed?**

In its analysis, the Original Hearing Body agreed with the Respondents argument that Tribal Sovereign Immunity prevents this case from further adjudication. They did so without providing an analysis on how, if at all, State and Federal Law takes precedent over Oneida Tribal law. The Respondents further claim that they are protected by sovereign immunity in this matter because they are functioning entities of the Tribe. This court will agree that the Respondents are functioning entities of the Oneida Tribe, but this court must decide if they are functioning government entities of the Oneida Tribe because according to Black's Law, seventh Edition, it defines Sovereign Immunity as:

*A government's immunity from being sued in its own courts without its consent.*

The Oneida Tribes Code of Ethics defines government official as:

*A government official includes all persons who are elected or appointed to serve on the Oneida Business Committee and any other board, committee, or commission created by the Oneida Business Committee or Oneida General Tribal Council.*

The Appellant claims that the Respondent incorrectly used United States and Wisconsin case law dealing with sovereign immunity on the application of the Sovereign Immunity Doctrine to Tribal Court Systems. None of the cases cited by the Respondent directly relate to how sovereign immunity applies in a Tribal Court. Instead, they relate to the protection of Tribal Governments from suit in State and Federal courts. This court agrees with the Appellant because the State and Federal law cited by the Respondent, is inconsistent with the Oneida Tribal law, specifically, the Oneida Administrative Procedures Act and the Oneida Appeals Commission Rules of Civil Procedure.

OAPA I. Authority:

*The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this act 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. The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI. of the Oneida Tribal Constitution as amended.*

In Rule 1., Scope of Rules, (E.) of the Oneida Appeals Judicial Code:

*All matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Oneida Appeals Commission. Other Oneida Rules of Procedure, Federal Rules of Civil Procedure, or the Rules of other States or tribes may be used as a guide, so long as these are consistent with existing Oneida Rules of Procedure, or the laws and customs of the Oneida Nation.*

This court agrees with the Appellant that the decision of the original hearing body is based on Federal and State law regarding sovereign immunity and its applicability to the Federal and State courts, rather than on Oneida Tribal Law.

The two other cases cited by the Respondent; Gollnick vs. Powless, Docket No. 00-AC-0003 and Hawk vs. Wisconsin Office of C.I. Docket No. 03-TC-332 are not applicable. In Gollnick vs. Powless the court held that; members of the Oneida Business Committee could not be subpoenaed to appear before the Oneida Personnel Commission. They enjoyed sovereign

immunity because the Oneida Business Committee members are government officials. In Hawk vs. Wisconsin Office of C.I. Docket No. 03-TC-332, the court held that; the Oneida Environmental Department is covered by the Tribe's sovereign immunity because Hawk failed to pursue the argument that the Environmental Department was not covered by the Oneida Tribe's Sovereignty Immunity.

The General Manager, MIS Manager, and the Human Resources Department are not elected, or appointed by the Oneida General Tribal Council and they do not participate in any government affairs, they are hired by the Oneida Tribe as part of its organizational structure. Therefore, they do not meet the requirements to be considered part of the Oneida Tribal Government.

The argument of the Appellant is persuasive to this court because it is very clear that the intent of sovereign immunity, when pertaining to the Oneida Nation, is in place to protect the Tribe as a government, and its government officials from internal and external suits, while performing their official duties. The Respondents were not persuasive in their argument that entities are government officials, or serve in any government capacity therefore, the Respondents cannot claim sovereign immunity.

#### **IV. Decision**

This court reverses the decision of the Original Hearing Body to grant the motion to dismiss. It is the decision of this Appellate Court to remand this case to the Original Hearing Body to conduct a hearing within thirty (30) days on merits of the case as presented in the original complaint accepted by the Oneida Appeals Commission as Docket No.03-TC-330.