



**LEGISLATIVE OPERATING COMMITTEE SPECIAL MEETING AGENDA**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
January 7, 2019 1:00 p.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
- III. Current Business**
  1. Sanctions and Penalties Law (pg. 2)
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
- VII. Executive Session**
- VIII. Recess/Adjourn**



Legislative Operating Committee  
January 7, 2019

# Sanctions and Penalties Law

<b>Submission Date:</b> 9/6/17	<b>Public Meeting:</b> 10/4/18
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a

**Summary:** *This item was carried over from the previous term. The original proposal was to develop a consistent process that would provide for members of the Oneida Business Committee and other Boards, Committees and Commissions to face sanctions for misconduct. Currently, the only penalty that OBC members may be subject to, is removal from office – meaning that less serious misconduct would either go unpunished or would result in a penalty that might be considered too extreme for a particular violation.*

**9/6/17 LOC:** Motion by Ernest Stevens III to add Sanctions and Penalties Law to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**9/6/17:** *Work Meeting.* Present: David P. Jordan, Jenny Webster Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner. Drafting attorney provided an update on the status of the Sanctions and Penalties law. Next steps will be: 1) pull the current draft back, 2) hold community meetings to understand what sanctions/penalties the community is interested in, 3) meeting with the boards/committees/commissions for input, and 4) holding work meeting with LOC to make policy decisions and choose next steps.

**11/1/17 LOC:** Motion by Kirby Metoxen to approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

**11/1/17:** *Work Meeting.* Present: Carol Silva, Bonnie Pigman, Ed Delgado, Rachel Hill, Matthew Denny, Reynold Danforth, Kirby Metoxen, Rosa Laster, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Jennifer Falck. Representatives from all the B/C/C’s were invited to this meeting to provide input on what a Sanctions & Penalties Law might look like.

**12/6/17:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa Santiago, Jennifer Falck. The LOC reviewed and considered comments from the November 1, 2017, work meeting with boards, committees, and commissions. LOC began making policy decisions. Drafter will work on draft, and policy options, and bring materials back to LOC when ready.

**3/9/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Laura Laitinen-Warren. LOC reviewed the first draft of the law, and directed that the LRO schedule a community meeting, with a special invitation to members of boards, committees, and commissions, to discuss the proposed law.

- 3/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. The LOC reviewed the potential date for the community meeting, and directed the drafting attorney to schedule the community meeting for May 3, 2018, and to ensure the notice is published in the Kalihwisaks twice, an appointment is sent to all members of the LOC and boards, committees, and commissions, and that the Communications Department is included in the appointment so they can make efforts to communicate notice of the event.
- 4/2/18 LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a community meeting/potluck be held on May 3, 2018; seconded by Daniel Guzman King. Motion carried unanimously.
- 4/26/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck. This was an LRO prep meeting to prepare a plan for the upcoming community meeting.
- 4/27/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber, Tani Thurner. The purpose of this work meeting was to prepare for the upcoming community meeting.
- 5/2/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck, David P. Jordan, Jennifer Webster. The LOC continued to prepare and discuss the upcoming community meeting.
- 5/3/18:** *Community Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Maureen Perkins, Carol Silva, Chad Wilson, Janice McLester, Gina Buenrostro, Winnifred Thomas, Brooke Doxtator, Ed Delgado, Oyanolu Adams, Michelle Braaten, Mark Powless, Cathy L. Metoxen, Carole Liggins, Madelyn Genskow. The purpose of this community meeting was to gain input on the proposed Sanctions and Penalties law.
- 5/11/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Daniel Guzman, Clorissa Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to review the comments received during the community meeting, and to determine if any revisions should be made to the law. The drafting attorney will update the draft of the law based on this discussion.
- 5/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the revisions to the draft made based on comments collected from the community meeting. Drafting attorney will update the draft.
- 6/6/18/ LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a legislative analysis be completed; seconded by Ernest Stevens III. Motion carried unanimously.
- 7/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator. The purpose of this work meeting was to review the BCSO's involvement in the Sanctions and Penalties law to ensure their role can be implemented as required by law.
- 7/18/18 LOC:** Motion by Kirby Metoxen to accept the legislative analysis for the Sanctions and Penalties Law and defer to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.
- 8/1/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to review and consider the legislative analysis.

**8/15/18 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Sanctions and Penalties Law to a public meeting to be held on September 20, 2018; seconded by Kirby Metoxen. Motion carried unanimously.

Subsequent Motion by Jennifer Webster to forward the Sanctions & Penalties Law to the Finance Office for a fiscal analysis to be completed; seconded by Kirby Metoxen. Motion carried unanimously.

**9/10/18:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker, Cathy Bachhuber, Maureen Perkins. The purpose of this work meeting was to discuss the fact that the September 20, 2018 public meeting on the proposed law will have to be canceled due to the Kalihwisaks failing to publish the public meeting notice in the September 6, 2018, edition. The LOC determined the next steps for moving the public meeting forward – an e-poll of an updated public meeting notice will be completed and the appointment that was sent out changed to reflect the new date.

E-poll conducted.

**9/19/18 LOC:** Motion by Daniel Guzman King to enter the e-poll results into the record; seconded by Jennifer Webster. Motion carried unanimously.

**10/4/18:** Public Meeting Held.

**10/17/18 LOC:** Motion by Jennifer Webster to accept the public meeting memo comments and public meeting comment review memorandum and defer to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.

**10/17/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker, Rosa Laster. The purpose of this work meeting was for the LOC to begin reviewing and considering the public comments that were received, and to make determinations on what revisions to the Law are necessary.

**10/25/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was for the LOC to continue reviewing and considering the public comments that were received, and to make determinations on what revisions to the Law are necessary. LRO will update the draft for the next LOC packet so a fiscal analysis can be requested.

**11/7/18 LOC:** Motion by Jennifer Webster to accept the public comment review memorandum and the updated draft; seconded by Daniel Guzman King. Motion carried unanimously.

**11/30/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review and approve the fiscal impact statement request memorandum to the Finance Department, and begin discussing a plan for the completion of this item.

**12/5/18 LOC:** Motion by Jennifer Webster to accept the updated legislative analysis, including the replacement of page 159 in the packet; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to approve the fiscal impact statement memorandum and forward to the Finance Department directing that a fiscal impact statement of the proposed Sanctions and Penalties law be prepared for inclusion on the January 2, 2019 Legislative Operating Committee meeting agenda; seconded by Daniel Guzman King. Motion carried unanimously.

**12/20/18:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Randall Cornelius. The purpose of this work meeting was to discuss traditional ways Oneida has sanctioned its leaders.

**1/2/19:** *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to review the adoption packet and discuss any changes that should be made. LRO will update all adoption materials.

**Next Steps:**

- Approve the adoption packet for the proposed Sanctions and Penalties law and forward to the Oneida Business Committee for inclusion on the tentatively scheduled February 24, 2019, General Tribal Council meeting agenda for General Tribal Council's consideration of adoption.





TO: General Tribal Council  
FROM: David P. Jordan, Legislative Operating Committee Chairperson  
DATE: February 24, 2019  
RE: Sanctions and Penalties Law

Please find the following attached backup documentation for your consideration of the Sanctions and Penalties law:

1. Resolution: Sanctions and Penalties Law
2. Statement of Effect: Sanctions and Penalties Law
3. Sanctions and Penalties Law Legislative Analysis
4. Sanctions and Penalties Law
5. Sanctions and Penalties Law Fiscal Impact Statement
6. Sanctions and Penalties Law PowerPoint Presentation Slides

#### *Overview*

If an elected or appointed official of the Nation engages in misconduct while in office the only remedy available to hold the official accountable is to remove that official from his or her position. The removal of an elected official is required to follow the process contained in the Nation's Removal law, which includes a petition, a preliminary review and hearing by the Nation's Judiciary, and ultimately a determination by General Tribal Council. [1 O.C. 104]. The removal of an appointed official is governed by the Boards, Committees, and Commissions law which provides that the Oneida Business Committee can terminate the appointment of an official with a two-thirds (2/3) majority vote. [1 O.C. 105.7-4].

Other than removal or termination of appointment, the Nation does not currently have a formal process to issue warnings, reprimands, or corrective actions against elected and appointed officials. The Legislative Operating Committee recognizes that not all instances of misconduct by an elected or appointed official may rise to the level of removal or termination of appointment. The Legislative Operating Committee also determined that a more effective government can be obtained if officials are provided the opportunity to take accountability for their actions and correct the behavior that resulted in misconduct, which may result in the individual becoming a better official.

Providing an elected or appointed official the opportunity to correct misconduct and improve behavior aligns with traditional Oneida ways. The Legislative Operating Committee learned through discussions with the Cultural Heritage Department that in the past a chief would be provided three (3) warnings in hope of improving the chief's behavior before the chief was dehorned or removed from his position of prominence. The focus of the warnings before the removal of the official was to provide an opportunity for corrective action to be taken that had the potential to result in a better official before removal of that official was sought. The Legislative Operating Committee is seeking the adoption of this Sanctions and Penalties law in an effort to

provide a mechanism for utilizing corrective actions to address the misconduct of officials and allow an opportunity for growth and improvement before removal or termination of appointment.

Additionally, during the special election held on July 9, 2016, a referendum question which asked, “Should the BC develop a law which provides for sanctions and due process for elected officials?” was included on the ballot. This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59). This positive referendum further demonstrates the Nation’s desire to develop a process to address misconduct of officials prior to seeking removal or termination of appointment.

This resolution adopts the proposed Sanctions and Penalties law which establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties law will:

- Require an elected or appointed official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected or appointed official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct, which is defined as:
  - a violation of the Constitution or any of the Nation’s laws, policies, or rules;
  - a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
  - a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
  - any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
  - who may file a complaint [1 O.C. 120.5-1];
  - when a complaint may be filed, [1 O.C. 120.5-2];
  - where a complaint may be filed [1 O.C. 120.5-4]; and
  - the necessary contents of a complaint [1 O.C. 120.5-3];
- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence [1 O.C. 120.5-5];
- Require all complaints alleged against an elected or appointed official to be handled in a confidential manner [1 O.C. 120.5-7];
- Delegate the responsibility to handle complaints alleged against an appointed official to the Oneida Business Committee, due to the fact that an appointed official serves at the discretion of the Oneida Business Committee, through a process which includes:
  - The opportunity for mediation between the complainant and the official [1 O.C. 120.6-3];
  - The opportunity for the official to provide an answer to the complaint [1 O.C. 120.6-4];
  - The requirement that an Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee immediately recuse himself or herself and shall not participate in any portion of the complaint process [1 O.C. 120.6-5];
  - An initial review by the Oneida Business Committee to determine whether or not



- the allegation made within the complaint has merit [1 O.C. 120.6-6];
- An investigatory hearing held by the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct [1 O.C. 120.6-8];
  - Deliberation and determination by the Oneida Business Committee on whether there is clear and convincing evidence that the official engaged in misconduct, and therefore appropriate sanctions and/or penalties shall be imposed [1 O.C. 120.6-9, 120.6-10];
  - Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [1 O.C. 120.7-1];
  - Allow for an individual to appeal the decision of the Oneida Business Committee or Trial Court to the Nation's Court of Appeals [1 O.C. 120.6-11, 120.7-4];
  - Provide various sanctions and penalties that may be imposed against an elected or appointed official [1 O.C. 120.8-2];
  - Provide factors to be used by the Oneida Business Committee and the Trial Court when determining the appropriate sanctions and/or penalties to impose [1 O.C. 120.8-3];
  - Clarify that the imposition of sanctions or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [1 O.C. 120.8-5];
  - Discuss the effect of a resignation by an elected or appointed official [1 O.C. 120.9]; and
  - Require that the Business Committee Support Office maintain a record of conduct in office for each elected or appointed official [1 O.C. 120.10].

The Legislative Operating Committee developed the proposed Sanctions and Penalties law through the review of various laws of the Nation, in addition to the laws of seven (7) other tribal nations. The Business Committee Support Office, Records Management Department, Human Resources Department, Cultural Heritage Department, and various boards, committees, and commissions of the Nation were consulted in the development of this law. Additionally, the Legislative Operating Committee held a community meeting on May 3, 2018, to gather input, ideas, and concerns from members of the community. Sixteen (16) people attended this community meeting and participated in the development of this law.

In accordance with the Legislative Procedures Act, a public meeting on the proposed Sanctions and Penalties law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018. Any changes made based on those comments have been incorporated into this draft. Additional information regarding the comments received during the public comment period and the Legislative Operating Committee's consideration of those comments can be found at <https://oneida-nsn.gov/government/register/public-meetings/>.

### **Requested Action**

Adopt the Resolution: Sanctions and Penalties Law.



# Oneida Nation

Post Office Box 365

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Oneida, WI 54155

## GTC Resolution # \_\_\_\_\_ Sanctions and Penalties Law

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**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** the purpose of the Sanctions and Penalties law (“the Law”) is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official; and

**WHEREAS,** the Law will require an elected or appointed official of the Nation to behave in a manner that promotes the highest ethical and moral standard; and

**WHEREAS,** the Law will subject an elected or appointed official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct; and

**WHEREAS,** the Law will provide a process for filing a complaint alleging misconduct against an elected or appoint official, including who may file a complaint, when to file a complaint, where a complaint may be filed, and the necessary contents of a complaint; and

**WHEREAS,** the Law will prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence; and

**WHEREAS,** the Law will require all complaints alleged against an elected or appointed official to be handled in a confidential manner; and

**WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an appointed official to the Oneida Business Committee, due to the fact that an appointed official serves at the discretion of the Oneida Business Committee; and

**WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an elected official to the Judiciary - Trial Court; and

**WHEREAS,** the Law will allow an appeal of a decision of the Oneida Business Committee or Judiciary - Trial Court to be made to the Nation’s Court of Appeals; and

43 **WHEREAS,** the Law provides the various sanctions and penalties that may be imposed against an  
44 elected or appointed official, and the factors that shall be used when determining the  
45 appropriate sanctions and/or penalties to impose; and  
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47 **WHEREAS,** the Law will clarify that the imposition of sanctions and/or penalties does not exempt an  
48 official from individual liability for the underlying misconduct, and does not limit any  
49 penalties that may be imposed in accordance with other laws; and  
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51 **WHEREAS,** the Law will provide for the effect of a resignation by an elected or appointed official; and  
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53 **WHEREAS,** the Law will require that the Business Committee Support Office maintain a record of  
54 conduct in office for each elected or appointed official; and  
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56 **WHEREAS,** a public meeting on the proposed Law was held on October 4, 2018, in accordance with  
57 the Legislative Procedures Act, and the public comments were reviewed and accepted by  
58 the Legislative Operating Committee on October 17, 2018 and October 25, 2018; and  
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60 **NOW THEREFORE BE IT RESOLVED,** that the Sanctions and Penalties law is hereby adopted and shall  
61 become effective ten (10) business days after the date of the adoption of this resolution.  
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## Statement of Effect

### *Sanctions and Penalties Law*

#### *Summary*

This resolution adopts a Sanctions and Penalties law for the purpose of establishing a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: January 7, 2019*

#### *Analysis by the Legislative Reference Office*

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts a Sanctions and Penalties law, which complies with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

This resolution adopts the proposed Sanctions and Penalties law which will establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties law will:

- Require an elected or appointed official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected or appointed official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
  - who may file a complaint [1 O.C. 120.5-1];
  - when a complaint may be filed, [1 O.C. 120.5-2];
  - where a complaint may be filed [1 O.C. 120.5-4]; and
  - the necessary contents of a complaint [1 O.C. 120.5-3];
- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence complying with directives under this law [1 O.C. 120.5-5];
- Require all complaints alleged against an elected or appointed official to be handled in a confidential manner [1 O.C. 120.5-7];
- Delegate the responsibility to handle complaints alleged against an appointed official to the Oneida Business Committee, due to the fact that an appointed official serves at the



discretion of the Oneida Business Committee, through a process which includes:

- The opportunity for mediation between the complainant and official whom is the subject of the complaint [1 O.C. 120.6-3];
- The opportunity for the official who is the subject of the complaint to provide an answer to the complaint [1 O.C. 120.6-4];
- The requirement that an Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee immediately recuse himself or herself and shall not participate in any portion of the complaint process [1 O.C. 120.6-5];
- An initial review by the Oneida Business Committee to determine whether or not the allegation made within the complaint has merit [1 O.C. 120.6-6];
- An investigatory hearing held by the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence [1 O.C. 120.6-8];
- Deliberation and determination by the Oneida Business Committee on whether there is clear and convincing evidence that the official engaged in misconduct, and therefore appropriate sanctions and/or penalties shall be imposed [1 O.C. 120.6-9, 120.6-10];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [1 O.C. 120.7-1];
- Allow for an individual to appeal the decision of the Oneida Business Committee or Trial Court to the Nation's Court of Appeals [1 O.C. 120.6-11, 120.7-4];
- Provide sanctions and penalties that may be imposed against an elected or appointed official [1 O.C. 120.8-2];
- Provide factors to be used when determining the appropriate sanctions and/or penalties to impose [1 O.C. 120.8-3];
- Clarify that the imposition of sanctions and/or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [1 O.C. 120.8-5];
- Discuss the effect of a resignation by an elected or appointed official [1 O.C. 120.9]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected or appointed official [1 O.C. 120.10].

In accordance with the LPA, a public meeting on the proposed Sanctions and Penalties law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018.

The Sanctions and Penalties law will become effective ten (10) business days after the adoption of the resolution by the General Tribal Council.

### ***Conclusion***

Adoption of this resolution would not conflict with any of the Nation's laws.



## SANCTIONS AND PENALTIES LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected and appointed officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [ <i>see Sanctions and Penalties, 1 O.C. 120.1-1</i> ].		
Affected Entities	All elected and appointed officials of the Nation; Any individual 18 years and older who has knowledge that an official has committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards.		
Affected Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita Law; and any of the Nation’s laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against appointed officials will be imposed by the Business Committee. Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting was held on October 4, 2018.		
Fiscal Impact	See fiscal impact statement prepared by Finance Dept. in accordance with the Legislative Procedures Act.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** When an official of the Nation commits misconduct while in office, there are few remedies available
- 3 for the Nation to discipline that official. Currently, appointed officials may have their appointment
- 4 terminated by the Business Committee, and elected officials may be removed in accordance with the
- 5 Removal Law. However, there may be instances of misconduct that do not rise to the level of removal.
- 6 In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more
- 7 appropriate.

- 8 **B.** This law creates a formal complaint process that gives all tribal members an opportunity to file  
 9 complaints while ensuring that due process rights for those accused are protected. This law also creates  
 10 a range of potential sanctions and penalties for officials who violate the laws of the Nation or commit  
 11 other forms of misconduct.
- 12 **C.** During the Special Election held on July 9, 2016, the following referendum question was approved by  
 13 a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for  
 14 elected officials?” The Election Law requires the Oneida Business Committee to present referendum  
 15 questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action  
 16 [see *Election Law 1 O.C. 102.12-9(c)*].
- 17 **D.** This law will apply to elected and appointed officials of the Nation, including members of the following  
 18 entities:  
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ELECTED	APPOINTED
<ul style="list-style-type: none"> <li>▪ Oneida Business Committee</li> <li>▪ Oneida Election Board</li> <li>▪ Oneida Gaming Commission</li> <li>▪ Oneida Land Claims Commission</li> <li>▪ Oneida Land Commission</li> <li>▪ Oneida Nation Commission on Aging (ONCOA)</li> <li>▪ Oneida Nation School Board</li> <li>▪ Trust Enrollment Committee</li> <li>▪ GTC Legal Resource Center Advocates and Attorney</li> </ul>	<ul style="list-style-type: none"> <li>▪ Anna John Resident Centered Care Community Board (AJRCCC)</li> <li>▪ Audit Committee (1 community member seat)</li> <li>▪ Environmental Resource Board (ERB)</li> <li>▪ Finance Committee (1 community member seat)</li> <li>▪ Oneida Community Library Board</li> <li>▪ Oneida Nation Arts Board</li> <li>▪ Oneida Personnel Commission</li> <li>▪ Oneida Police Commission</li> <li>▪ Oneida Pow Wow Committee</li> <li>▪ Oneida Nation Veterans Affairs Committee (ONVAC)</li> <li>▪ Pardon and Screening Forgiveness Committee</li> <li>▪ Southeastern WI Oneida Tribal Services Advisory Board (SEOTS)</li> <li>▪ Oneida Youth Leadership Institute Board of Directors</li> </ul>

20 \*This law does not apply to members of the Judiciary or corporate entities of the Nation.

21 **SECTION 3. CONSULTATION AND OUTREACH**

- 22 **A.** The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open  
 23 Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed  
 24 in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:
- 25 ▪ Ho Chunk Nation Code of Ethics 2 HCC 1;
  - 26 ▪ Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
  - 27 ▪ Pokagon Band of Potawatomi Indians Ethics Code;
  - 28 ▪ Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
  - 29 ▪ Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
  - 30 ▪ Skokomish Code of Ethics S.T.C. 1.05;
  - 31 ▪ Pit River Tribal Government Code of Conduct Section 80.
- 32 **B.** The Business Committee Support Office, Records Management Department, Human Resources  
 33 Department and representatives from the following Boards, Committees and Commissions were  
 34 consulted in the development of this law and analysis:



- 35       ▪ Anna John Resident Centered Care Community Board (AJRCCC);
- 36       ▪ Election Board;
- 37       ▪ Environmental Resource Board (ERB);
- 38       ▪ Gaming Commission;
- 39       ▪ Land Commission;
- 40       ▪ Police Commission;
- 41       ▪ Pow-wow Committee;
- 42       ▪ Trust Enrollment Committee;
- 43       ▪ Oneida Nation Veterans Affairs Committee (ONVAC).
- 44 C. A community pot-luck meeting was held on May 3, 2018 to gather community input on this law. Sixteen
- 45       (16) people attended this meeting.

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#### 47 **SECTION 4. PROCESS**

- 48 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 49 B. The law was originally added to the Active Files List on October 15, 2014 and was carried over from
- 50       the previous term. The law was re-added to the Active Files List on September 6, 2017.
- 51 C. At the time this legislative analysis was developed, the following work meetings had been held
- 52       regarding the most recent efforts to develop this law and legislative analysis:
- 53       ▪ September 6, 2017: LOC work meeting.
- 54       ▪ November 1, 2017: LOC work meeting with representatives from the following boards, committees
- 55       and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land
- 56       Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and
- 57       committees were invited to attend this work meeting.
- 58       ▪ December 6, 2017: LOC work meeting.
- 59       ▪ March 9, 2018: LOC work meeting.
- 60       ▪ May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support
- 61       Office, and representatives from the following boards, committees and commissions: Police
- 62       Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and
- 63       commissions were invited to attend this meeting.
- 64       ▪ May 11, 2018: LOC work meeting.
- 65       ▪ July 9, 2018: Work meeting with BC Support Office.
- 66       ▪ August 1, 2018: LOC work meeting.
- 67       ▪ October 17, 2018: LOC work meeting.
- 68       ▪ October 25, 2018: LOC work meeting.
- 69       ▪ December 20, 2018: Work meeting with Cultural Heritage.

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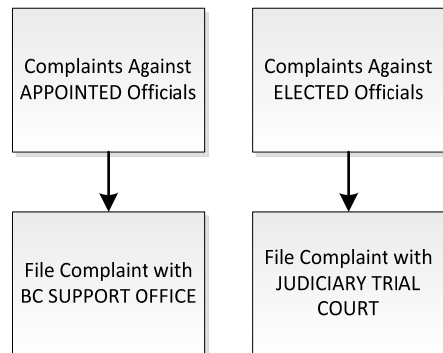
#### 71 **SECTION 5. CONTENTS OF THE LEGISLATION .**

- 72 A. *What Qualifies as Misconduct.* The Oneida Nation expects elected and appointed officials to uphold
- 73       high ethical and moral standards. Officials who engage in misconduct may be subject to sanctions and
- 74       penalties. This section describes what behaviors could be considered misconduct [*see Sanctions and*
- 75       *Penalties 120.4*]. Under this law, the definition of misconduct is very broad and includes any of the
- 76       following:
- 77       ▪ Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.

- 78 ○ Examples include the Code of Ethics and Conflict of Interest Law.
- 79 ■ Violating the bylaws or standard operating procedures of the board the official serves on.
- 80 ■ Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime
- 81 elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- 82 ■ Any other activity that does not uphold the moral and ethical standards expected of the Nation's
- 83 officials.

84 **B. Filing a Complaint.** Under this law, anyone eighteen (18) years or older who believes that an official  
85 has committed misconduct can file a complaint. The person filing the complaint does not need to be an  
86 enrolled tribal member. Examples of individuals who might file complaints include community  
87 members, employees of the Nation, and fellow officials. The complaint must be filed  
88 within 90 days of when the alleged misconduct occurred or was discovered [see *Sanctions and*  
89 *Penalties 120.5*].

**Chart 2. Where to File Complaints**



- 91 ■ **Contents of the Complaint.** Complaints must include the  
92 following information [see 120.5-3]:
  - 93 ○ Information about the official, including the official's  
94 name and the entity they serve on.
  - 95 ○ Information about the alleged misconduct, including  
96 date, time, location and specific details.
  - 97 ○ The specific law, policy, rule or bylaw that the  
98 official violated.
  - 99 ○ Information about any witnesses or others with  
100 knowledge of the violation.
  - 101 ○ Contact information of the individual filing the complaint.
  - 102 ○ Supporting documents and any other information required by the Rules of Civil Procedure.
    - 103 - The Rules of Civil Procedure must be followed for complaints against elected  
104 officials, which are filed in the Trial Court. More detail on the Rules of Civil  
105 Procedure is included later in this analysis.
- 106 ■ **Where to File Complaints.** Complaints against appointed officials are filed with the Business  
107 Committee (BC) Support Office, which is currently located at the Norbert Hill Center. Complaints  
108 against elected officials are filed with the Trial Court, which is located within the Oneida Judiciary.
- 109 ■ **Retaliation.** Retaliation against someone who files a complaint or cooperates with a misconduct  
110 investigation is not allowed.
- 111 ■ **Right to an Attorney or Advocate.** Any official who has been accused of misconduct has the right  
112 to be represented by an attorney or an advocate, at their own expense.
  - 113 ○ **Legal Resource Center.** The Legal Resource Center Law established an office to provide  
114 legal advice and representation to Tribal members and employees in cases before the  
115 Judiciary.
- 116 ■ **Confidentiality.** All complaints against officials of the nation will be handled confidentially, with  
117 hearings and proceedings regarding the complaint closed to the public. Records of the hearings will  
118 be kept confidential. However, the final decision of the Business Committee or Judiciary and any  
119 sanctions and penalties imposed against an official will be public information [see 120.5-7].
  - 120 ○ **Judiciary Law.** The Judiciary Law states that proceedings of the court are open to the public  
121 except for peacemaking, mediation, proceedings where the judge has safety or

122 confidentiality concerns, or “if expressly prohibited by law” [see Judiciary Law 8 O.C.  
123 801.4-4].

124 **C. *Complaints Against an Appointed Official.*** Complaints against an appointed official will be filed with  
125 the Business Committee (BC) Support Office. Appointed officials serve at the discretion of the Oneida  
126 Business Committee (BC), who may terminate appointments at any time by 2/3 majority vote [see  
127 *Boards, Committees Commissions 1 O.C. 105.7-4*]. The LOC has determined that because the BC is  
128 responsible for selecting and appointing officials, the BC should be responsible for holding appointed  
129 officials accountable through sanctions and penalties. The following is a description of the complaint  
130 process for appointed officials [see 120.6].

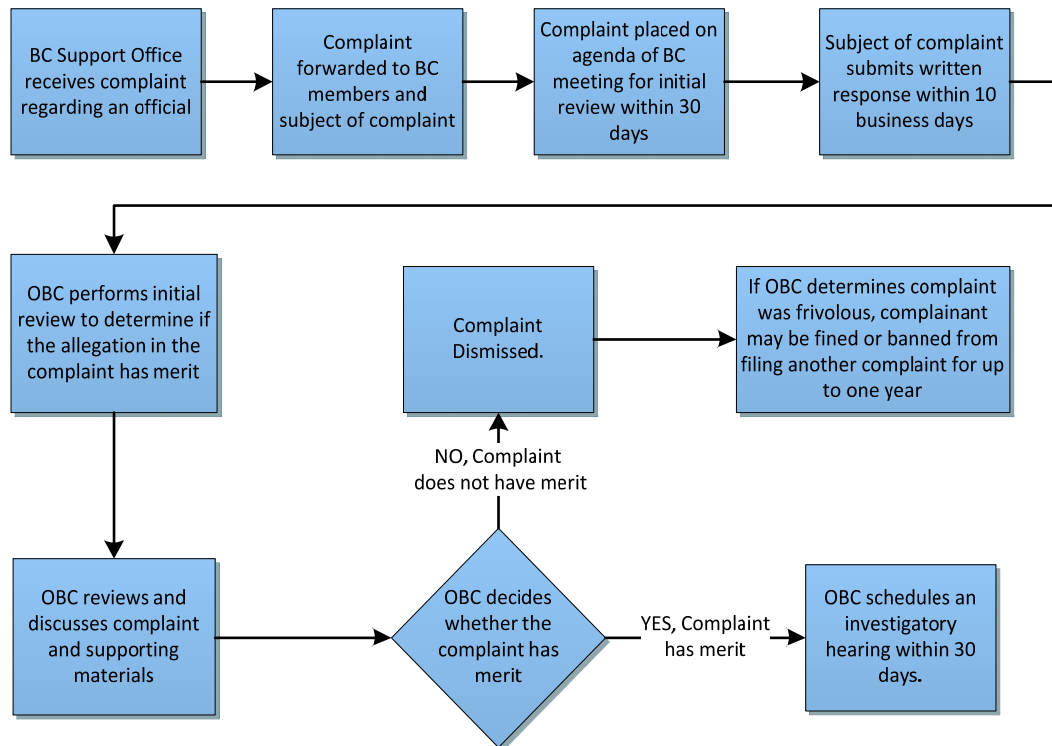
- 131 ■ *Receipt of Complaint.* When the BC Support Office receives a complaint, it will forward copies of  
132 the complaint to all members of the Oneida Business Committee (BC) for review, and to the official  
133 the complaint has been made against. The BC Support Office will place the complaint on the agenda  
134 of a Business Committee meeting within thirty (30) days.
- 135 ■ *Mediation.* The individual who filed the complaint or the official accused of misconduct may  
136 request mediation within five (5) business days of the complaint being filed. If both parties agree  
137 to mediation, the BC Support Office will schedule a meeting with a trained mediator to attempt to  
138 resolve the complaint. If the complaint is resolved by mediation, the complaint will be formally  
139 dismissed. If the complaint is not resolved, the initial review will proceed [see 120.6-3].
- 140 ■ *Answer to the Complaint.* The official who has been accused of misconduct will have ten (10)  
141 business days to respond in writing to the complaint. The official may admit to the misconduct,  
142 deny the misconduct, or provide an affirmative defense. An affirmative defense means that an  
143 official admits they committed the alleged acts, but that they were justified in doing so.
- 144 ■ *Conflict of Interest & Recusal.* If a member of the Oneida Business Committee (BC) has a conflict  
145 of interest regarding a complaint, they must recuse themselves and not participate in the review or  
146 hearings. If a member of the BC fails to recuse themselves, that member may be subject to sanctions  
147 and penalties under this law.
- 148 ■ *Initial Review.* The Oneida Business Committee (BC) will review the complaint, the official’s  
149 written response, and any documentation. The BC will discuss and decide whether the complaint  
150 has merit by majority vote. If the BC decides the complaint has merit, they will schedule an  
151 investigatory hearing. If BC decides the complaint does not have merit, the complaint will be  
152 dismissed.
  - 153 ○ *Frivolous Complaints.* If the BC decides that an individual filed a complaint that was  
154 frivolous, false, or made with malicious intent, they may fine that individual up to \$500 or  
155 ban them from filing another complaint for up to 1 year. In addition, the official the  
156 frivolous complaint was filed against may also file a civil suit in the Trial Court.

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**Chart 3. Complaint Process Against Appointed Officials: Receipt and Initial Review of Complaint.**

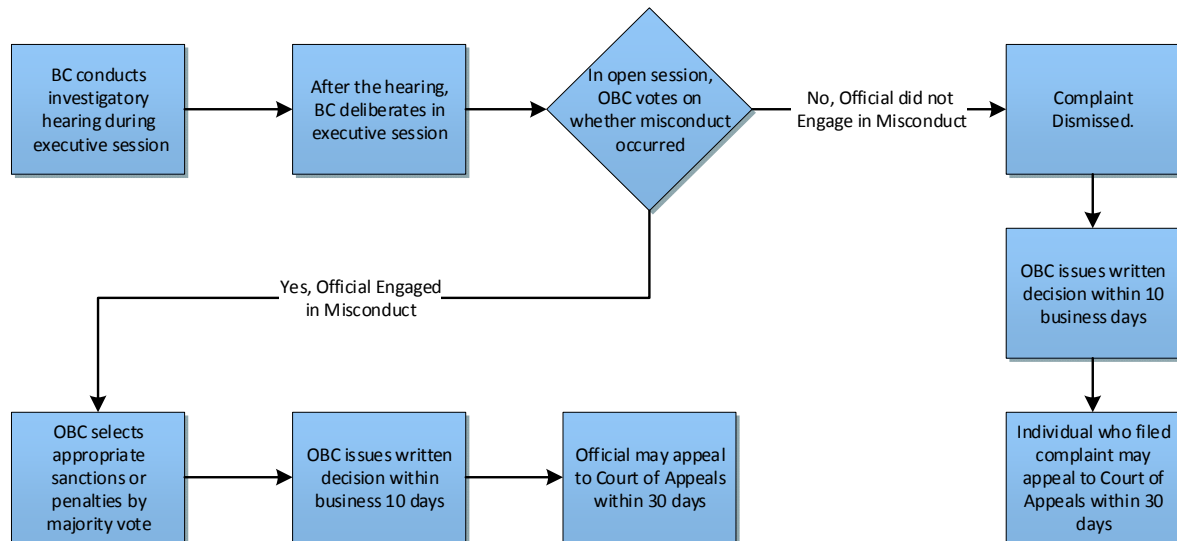


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- **Investigatory Hearing.** The BC will conduct an investigatory hearing during executive session of a regular or special BC meeting. During this hearing, the BC will determine whether there is enough evidence to substantiate the allegations by clear and convincing evidence.
  - **Burden of Proof.** The burden of proof for allegations made under this law is “clear and convincing evidence.” This is the same standard the Nation uses in misconduct cases against judges in the Oneida Judiciary [see 8 O.C. Judiciary Law 801.12-6(c)]. This means that the person filing the complaint must provide evidence “indicating that the [allegation] to be proved is highly probably or reasonably certain” [see *Black’s Law Dictionary*]. This is a greater burden than “preponderance of the evidence,” the standard in most civil trials, but less than evidence “beyond a reasonable doubt,” which is used for criminal trials.
  - **Testimony.** The BC will have the authority to call witnesses to provide testimony and physical evidence under oath. The official accused of misconduct will have the opportunity to answer allegations, provide witness testimony and evidence on their own behalf. The individual who filed the complaint will also have an opportunity to answer questions, provide witness testimony and information to support their claim. The hearing will be informal.
- **Deliberation.** After the investigatory hearing, the BC will remain in executive session to discuss the evidence and information provided. The BC will also discuss which sanctions and penalties to impose, if appropriate.
- **Determination.** During an open session of a special or regular Oneida Business Committee meeting, the BC will vote to decide whether the allegations of misconduct have been proven by clear and convincing evidence. If the BC finds that the official has engaged in misconduct, then they will also decide the appropriate sanction or penalty by majority vote. The BC must issue a

- 192 written decision within 10 days of the investigatory hearing, and provide copies of the decision to  
 193 the person who made the complaint, the official accused of misconduct, and the BC Support Office.  
 194 ■ **Appeal.** Both the official accused of misconduct and the individual who filed the complaint have  
 195 the right to appeal the decision of the Oneida Business Committee. The appeal must be filed with  
 196 the Court of Appeals in accordance with the Rules of Appellate Procedure.  
 197 ○ *Timeline for Appeal.* The Rules of Appellate Procedure require parties to file an appeal  
 198 within thirty (30) days of the original judgment [see *Rules of Appellate Procedure, 8 O.C.*  
 199 *805.5-2(a)*].  
 200  
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**Chart 4. Complaint Process Against Appointed Officials: Investigatory Hearing & Decision**



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 203 **D. Complaints Against an Elected Official.**

- 204 ■ Complaints against elected officials, including members of the Oneida Business Committee, will  
 205 be heard by the Nation’s Trial Court. Because elected officials are chosen by the tribal membership,  
 206 it has been determined that complaints against these officials should go to the Nation’s Trial Court  
 207 [see *Sanctions and Penalties 120.7*].  
 208 ■ All complaints must follow the Judiciary Rules of Civil Procedure. The following is a brief  
 209 overview of how a civil case is processed by the Trial Court using the Rules of Civil Procedure.  
 210 For full and complete information regarding the trial court process, see the Judiciary Rules of Civil  
 211 of Civil Procedure.  
 212 ○ *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has  
 213 a standard complaint form with instructions to fill out the complaint.  
 214 - *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure  
 215 require the complaint to include the full name and address of the plaintiff and  
 216 defendant, why the defendant is being sued, facts supporting each claim, why the  
 217 trial court has jurisdiction, specifically what relief is sought from the defendant, and  
 218 a summons [see *Oneida Judiciary Rules of Civil Procedure 803.5-1*].  
 219 - *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to  
 220 file a general civil case. However, individuals may request a fee waiver from the  
 221 court for the following reasons: unemployed, health/medical, or below poverty level.

222 Note that this fee applies only to cases filed against elected officials. Complaints  
223 against appointed officials will be filed with the BC Support Office, which does not  
224 charge a filing fee.

225 - *Summons*: A summons is a document ordering a defendant to appear before a judge.  
226 The Trial Court has a standard summons form.

227 ○ *Complaint and Summons are served on official*. The complaint and summons must be  
228 delivered to the official within 30 days after the complaint is filed. In addition, for  
229 complaints against officials, notice must also be served to the Secretary's office [*see 8 O.C.*  
230 *Rules of Civil Procedure 803.5*].

231 ○ *Petitioner Files Proof of Service*. The petitioner must provide proof to the Court that the  
232 complaint and summons were delivered to the defendant within 10 days of delivery. If  
233 proof of service is not completed, then the case will be dismissed. [*see Rules of Civil*  
234 *Procedure 803.5-3*].

235 ○ *Official Files an Answer*. The official responds to the complaint by filing an answer. The  
236 official can either admit to or deny the allegations made in the complaint and provide  
237 defenses to each claim made in the complaint.

238 ○ *Pre-Trial Meeting*. A pre-trial meeting may be scheduled between the judge, petitioner  
239 and defendant. The purpose for this meeting could include preparing for the trial, creating  
240 a plan regarding discovery, or facilitating a settlement, such as peacemaking [*see Rules of*  
241 *Civil Procedure 803.12*].

242 ○ *Discovery*. The petitioner may make efforts to obtain information relevant to the case, such  
243 as documents and electronic information. The judge may place limitations on the  
244 information.

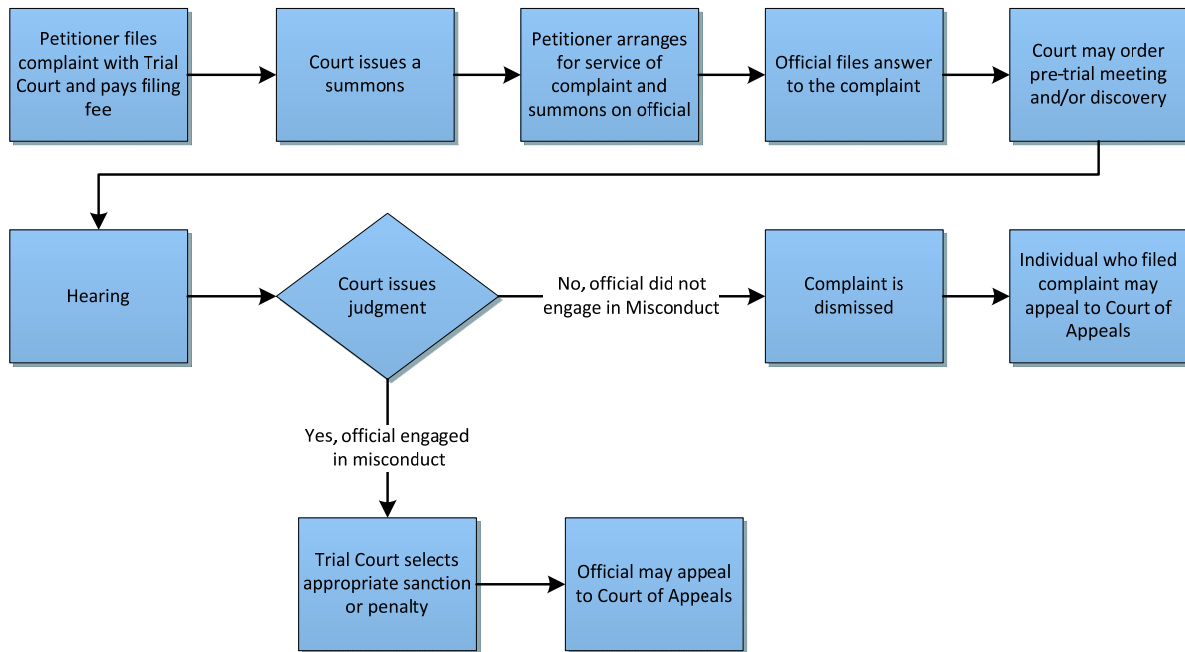
245 ○ *Hearing*. Hearings are conducted in accordance with the Rules of Civil Procedure, which  
246 may include opening statements, presentation of the parties' cases, rebuttals and closing  
247 statements [*see Rules of Civil Procedure 803.38*].

248 ○ *Judgment*. If the Trial Court determines by clear and convincing evidence that the official  
249 engaged in misconduct, then the Trial Court will impose sanctions and penalties that they  
250 deem appropriate.

251 ○ *Appeals*. Both the official accused of misconduct and the individual who filed the  
252 complaint have the right to appeal the decision of the Trial Court. The appeal must be filed  
253 with the Court of Appeals in accordance with the Rules of Appellate Procedure.

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266 **Chart 5. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.**  
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270 **E. Sanctions and Penalties.** This law includes a list of sanctions and penalties that may be imposed on  
271 an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected  
272 official. The Oneida Business Committee is responsible for imposing sanctions on an appointed official.  
273 Officials may receive one or more of the following penalties. The Trial Court or BC will select  
274 whichever penalty they feel is appropriate. [see *Sanctions and Penalties 120.8*]

- 275 ■ *Conditional Penalties.* Sanctions and penalties can also be imposed on a conditional basis. For  
276 example, an official could be ordered to make a public apology and attend mandatory training, or  
277 otherwise face suspension [see *120.8-4*].
- 278 ■ *Failure to Comply.* If an official fails to comply with a sanction or penalty imposed against them,  
279 that official can face additional sanctions as a result of additional misconduct complaints under this  
280 law, termination of appointment, or removal in accordance with the Removal Law. An example  
281 would be an official failing to pay a fine or violating the terms of their suspension [see *120.8-6*].

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**Chart 5. List of Potential Sanctions and Penalties**

- **Verbal Reprimand**
- **Public Apology**
- **Written Reprimand**
- **Suspension**
- **Restitution**
- **Fines**
- **Loss of Stipend**
- **Mandatory Training**
- **Termination of Appointment**
- **Removal, in accordance with Removal Law**

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- **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement describing the official’s misconduct. The chairperson will also state that the official’s behavior was unacceptable and direct the official not to engage in misconduct again.
  - **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting. The apology must include a description of the misconduct, a statement that the actions were wrong, a description of the harm caused by the misconduct, and a “clear and unambiguous” apology.
  - **Written Reprimand.** The Oneida Business Committee or Judiciary Trial Court may publish a written reprimand in the Nation’s official media outlets. The Nation’s official media outlets are the Oneida Nation website and the Kalihwisaks newspaper [see BC Resolution #03-22-17-B]. The written reprimand will include the same information as a verbal reprimand.
  - **Suspension.** The BC or Trial Court may suspend part-time officials for up to two (2) meetings. Full-time officials, such as members of the Business Committee or Gaming Commission, may be suspended for up to fifteen (15) business days. During a suspension, the official cannot attend meetings, trainings, or conferences. The official also cannot vote or perform work for the board. In addition, the official cannot earn any stipends, salary or mileage during the suspension.
    - **Multiple Suspensions on One Entity.** If multiple officials on the same entity are suspended at the same time, the suspensions must be imposed on a staggered basis to avoid loss of a quorum. For example, if multiple members of the Business Committee are suspended, each member will be suspended one at a time on a staggered basis [see 120.8-2(d)(3)].
  - **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly received benefit, such as stolen money or items or replacing damaged property. The point of restitution is to make someone whole. Examples of restitution include paying back money that was improperly taken or paying to repair or replace damaged items.
  - **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a fine is a punishment. The maximum amount of each fine is \$2500.
    - **Fine Process.** All fines will be paid to the trial court and deposited into the Nation’s General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld on final appeal. If the fine is not paid on time, the Nation may collect the money through garnishment or the official’s per capita payment.
    - **Community Service Alternative.** An official can complete community service to make up all or part of their fine. The rate earned for community service will be the Nation’s minimum wage, which is currently \$10.10 per hour. The Nation currently allows community service for fines issued in the Hunting, Fishing and Trapping Law [see Hunting Fishing and Trapping 406.10-5(a)].
  - **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of appointed boards are eligible for only one meeting stipend per month, so this could amount to two month’s worth of stipends [see Boards, Committees and Commission Law 1 O.C. 105.13-3(a)]. Members of elected boards may receive up to two (2) meeting stipends per month, so this could amount to one month’s worth of stipends for a board that meets twice monthly [see Boards, Committees and Commissions Law 1 O.C. 105.13-3(b)].
  - **Mandatory Training.** An official can be ordered to complete mandatory training program to address their behavior. Examples include anger management or sexual harassment training.



- 327       ▪ **Termination of Appointment.** The Oneida Business Committee can terminate the appointment of  
328 any appointed official at any time by 2/3 majority vote. All appointed members serve at the  
329 discretion of the BC [see *Boards, Committees and Commissions 1 O.C. 105.7-4*].
- 330       ▪ **Removal.** The Trial Court can recommend that the removal process be initiated for an official in  
331 accordance with the Removal Law. However, this would only be a recommendation. The Removal  
332 Law provides a strict process that must be followed to remove elected officials:
- 333           ○ **Removal Law Process.** In order to remove an elected official, an eligible voter must file a  
334 petition with the Secretary signed by at least 30% of the vote cast in the previous general  
335 election. For example, the number of votes cast in the 2017 general election was 1612, so  
336 the number of signatures needed to initiate removal is 484. Then, the Judiciary conducts a  
337 preliminary review to determine whether there is sufficient grounds for removal. If so, the  
338 Judiciary holds a hearing. If the Judiciary determines that sufficient grounds for removal  
339 has been proven, the findings are forwarded to the Nation’s Chair, who schedules a GTC  
340 meeting. At the GTC meeting, an elected official may be removed from office after a 2/3  
341 vote [see *Removal Law 1 O.C. 104*].
- 342 **F. Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court and Oneida Business  
343 Committee may consider the following when deciding which sanction or penalty to apply [see  
344 *Sanctions and Penalties 120.8-3*].
- 345       ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to repeat  
346 the misconduct.
- 347       ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
- 348       ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
- 349       ▪ Whether any prior complaints have been filed against the official. For example, is this the first  
350 complaint against the official or does it represent a pattern of behavior.
- 351 **G. Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an  
352 official who commits misconduct may also suffer other consequences [see *Sanctions and Penalties*  
353 *120.8-4*]. These include:
- 354       ▪ Removal from office or termination of appointment.
- 355       ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft  
356 or violent acts.
- 357       ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for  
358 damages.
- 359       ▪ Any other penalties listed in another law of the Oneida Nation.
- 360           ○ For example, a violation of the Computer Resources Ordinance may result in loss of access  
361 to the Nation’s computer resources [see *Computer Resources Ordinance 2 O.C. 215.9-1*].
- 362 **H. Effect of Resignation by an Official.** If an official resigns from office after a complaint has been filed,  
363 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning  
364 from office does not end or prevent an investigation [see *Sanctions and Penalties 120.9*].
- 365 **I. Record of Conduct in Office.** A record of conduct for each official will be maintained by the BC  
366 Support Office, which will include copies of complaints filed against the official, outcome of the  
367 complaints, and any sanctions and penalties the official received. This record will be maintained for at  
368 least seven (7) years [see *Sanctions and Penalties 120.10*].
- 369       ▪ **Public Access to Record of Conduct.** The record of conduct maintained by the BC Support Office  
370 will only be made available for review to the Oneida Business Committee and the Trial Court. The

371 purpose of the record of conduct is so that the Trial Court or Business Committee can review  
372 previous complaints against the official when determining a potential sanction or penalty [see  
373 *Sanctions and Penalties 102.5-7(c)*].  
374 ■ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court and Oneida  
375 Business Committee regarding a complaint against an elected official and any sanctions and  
376 penalties imposed against an official will be public information [see *Sanctions and Penalties 102.5-*  
377 *7(c)*.]  
378

## 379 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

380 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this  
381 law. This law does not conflict with any of the referenced laws.  
382 ■ *Rules of Civil Procedure.*  
383 ■ *Rules of Appellate Procedure.*  
384 ■ *Garnishment Law.*  
385 ■ *Per Capita Law.*  
386

## 387 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

388 **A. *Due Process.*** Officials accused of misconduct have the right to be represented by an attorney or  
389 advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to  
390 appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and  
391 evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.  
392

## 393 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

394 **A.** Sanctions and penalties against appointed officials will be imposed by the Business Committee.  
395 Sanctions and penalties against elected officials will be imposed by the Nation’s Trial Court.  
396

## 397 **SECTION 9. OTHER CONSIDERATIONS**

398 **A. *Code of Ethics.*** Most other tribal, municipal and state governments place sanctions and penalties within  
399 their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are  
400 closely related. The Code of Ethics is currently on the LOC’s Active Files List for potential  
401 amendments. Updating the Code of Ethics would provide clear guidance to officials, individuals filing  
402 complaints, the Business Committee and the Judiciary when they begin hearing complaints under this  
403 law.

404 **B. *Number of Potential Complaints.*** Since the Nation currently has no formal sanctions and penalties  
405 process, it is not possible to predict the number of complaints that may be filed against elected and  
406 appointed officials.

407 ■ *Recommendation:* Given the uncertainty regarding the number of potential complaints, the  
408 Business Committee, BC Support Office and Judiciary should be prepared to potentially  
409 process a large number of complaints upon passage of this law.

410 **C. *Impact of Suspension on Full-Time Officials.*** Members of the Oneida Business Committee and  
411 Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials  
412 would impact salaries, benefits such as health insurance, and access to buildings. The Human Resources

413 Department reports that they have a suspension procedure in place for employees of the Nation, and  
 414 that this procedure could be applied or modified for suspension of full-time officials.

- 415     ▪ *Recommendation:* Since notifications of suspension go to the BC Support Office, it is suggested  
 416         that the BC Support Office work with HRD to develop a process should suspensions of full-  
 417         time BC members or Gaming Commissioners occur.

418 **D. Comparison to Other Nations.** Research of other tribal nations and municipalities indicate that there  
 419 are many different processes for sanctions and penalties of public officials. There is not a single  
 420 standard used by all tribal governments. Examples of other sanctions and penalties processes are  
 421 provided for information:

422 **Chart 6. Sanctions and Penalties Process of other Tribal Nations**

Tribe	Where Complaints Are Filed	Who Investigates the Complaint	Who Decides the Sanction or Penalty
<b>Siletz</b>	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
<b>Ho Chunk</b>	Judiciary	Judiciary	President
<b>Rosebud Sioux</b>	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
<b>Skokomish</b>	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

423 \*Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.  
 424

425 **E. Create a Standard Complaint Form.** The BC Support Office and Judiciary may want to consider  
 426 drafting standard complaint forms to provide to individuals who wish to file a complaint against  
 427 officials under this law. This form could include the information required under 120.5-3, instructions,  
 428 and clearly state where complaints against elected officials or appointed officials must be filed. The  
 429 Nation’ Trial Court has a standard civil complaint packet which could be used as an example.

430 **F. Complaints against Judiciary.** The Judiciary Law already contains a process for reprimand,  
 431 suspension and removal of judges [see Judiciary Law 8 O.C. 801.12]. Therefore, the Judiciary is not  
 432 included in this law.

433 **G. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules  
 434 of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on  
 435 the LOC’s Active Files List and may be amended in the future.

436 **H. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

- 437     ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except  
 438         emergency legislation [see Legislative Procedures Act 1 O.C. 109.6-1].
- 439     ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating  
 440         Committee and may be prepared by any agency who may receive funding if the legislation is  
 441         enacted; who may administer a program if the legislation is enacted; who may have financial  
 442         information concerning the subject matter of the legislation; or by the Finance Office, upon request  
 443         of the Legislative Operating Committee [see Legislative Procedures Act 1 O.C. 109.6-1(a and b)].

444

**Title 1. Government and Finances - Chapter 120**  
**SANCTIONS AND PENALTIES**

**Kalihwahníla·tú· Okhale? Atatlihwá?thlewáhtu Kayanlása**

*Giving strength to the issues and Forgiving oneself for the issue at hand Laws*

120.1. Purpose and Policy	120.7. Complaint Alleged Against an Elected Official
120.2. Adoption, Amendment, Repeal	120.8. Sanctions and Penalties
120.3. Definitions	120.9. Effect of Resignation by an Official
120.4. Misconduct.	120.10. Record of Conduct in Office
120.5. Filing of a Complaint	
120.6. Complaint Alleged Against an Appointed Official	

- 1  
2 **120.1. Purpose and Policy**  
3 120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties  
4 that may be imposed upon elected and appointed officials of the Nation for misconduct in office  
5 for the purpose of providing an opportunity for the official to take corrective action to address the  
6 misconduct and promote accountability and improved performance of the official.  
7 (a) This law applies to members of the Oneida Business Committee.  
8 (b) This law does not apply to judges of the Oneida Nation Judiciary.  
9 (c) This law does not apply to members of corporate entities of the Nation.  
10 120.1-2. *Policy.* It is the policy of the Nation to ensure that elected and appointed officials who  
11 commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure  
12 that there is a fair process in place that enables officials to fairly respond to allegations of  
13 misconduct.  
14 120.1-3. It is the intent of the Nation that all elected and appointed officials strive to exhibit and  
15 uphold the Nation's core values of The Good Mind as expressed by Onayote'a'ka, which includes:  
16 (a) Kahletsyalása. The heart felt encouragement of the best in each of us.  
17 (b) Kanolukhwása. Compassion, caring, identity, and joy of being.  
18 (c) Ka'nikuhli'yó. The openness of the good spirit and mind.  
19 (d) Ka'tshatstása. The strength of belief and vision as a People.  
20 (e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our future.  
21 (f) Twahwahtsílawayá. All of us are family.  
22 (g) Yukwatsístayá. Our fire, our spirit within each one of us.  
23  
24 **120.2. Adoption, Amendment, Repeal**  
25 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-\_\_-\_\_-\_\_-\_\_.  
26 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the  
27 procedures set out in the Legislative Procedures Act.  
28 120.2-3. Should a provision of this law or the application thereof to any person or circumstances  
29 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
30 to have legal force without the invalid portions.  
31 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
32 the provisions of this law shall control.  
33 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
34

35 **120.3. Definitions**

36 120.3-1. This section shall govern the definitions of words and phrases used within this law. All  
37 words not defined herein shall be used in their ordinary and everyday sense.

38 (a) “Affirmative defense” means a fact or set of facts other than those alleged by the  
39 complainant which, if proven by the official, defeats or mitigates the consequences of the  
40 official's otherwise unlawful conduct.

41 (b) “Answer” means a formal written statement addressing the dispute on the merits  
42 and presents any defenses and counterclaims.

43 (c) “Business Committee Support Office” means the office that provides administrative  
44 support for the Oneida Business Committee and various other governmental operations.

45 (d) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding  
46 holidays recognized by the Nation.

47 (e) “Clear and convincing evidence” means that it is substantially more likely than not that  
48 the facts presented are true.

49 (f) “Complainant” means an individual who has made a complaint.

50 (g) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

51 (h) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

52 (i) “Entity” means a board, committee, commission, office, unincorporated agency, or  
53 other group of the Nation an individual may be appointed or elected to serve a position on,  
54 including the Oneida Business Committee.

55 (j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be  
56 supported by a good faith argument. Most often frivolous complaints are intended to  
57 merely harass, delay, or embarrass the opposition.

58 (k) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

59 (l) “Nation” means the Oneida Nation.

60 (m) “Official” means any person who is elected or appointed to serve a position for the  
61 Nation, including, but not limited to, a position on a board, committee, commission, or  
62 office of the Nation, including the Oneida Business Committee.

63 (n) “Restitution” means compensation to an individual or entity for an injury, damage or  
64 loss.

65 (o) “Stipend” means the amount paid by the Oneida Nation to individuals serving on  
66 boards, committees and commissions of the Nation to offset the expenses of being a  
67 member on the board, committee or commission.

68 (p) “Substantiate” means to find that the complaint or allegation in the complaint is valid  
69 because there is clear and convincing evidence.

70 (q) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

71  
72 **120.4. Misconduct**

73 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest  
74 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is  
75 essential to the conduct of government.

76 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which  
77 constitutes misconduct. Misconduct includes:

78 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;

79 (b) a violation of the bylaws, standard operating procedures or other internal operating  
80 documents that govern the entity upon which the official serves;



81 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a  
82 felony under federal law or Wisconsin law; and

83 (d) any other activity that is incompatible with the high moral and ethical standards that  
84 are expected of the Nation's officials.  
85

### 86 **120.5. Filing of a Complaint**

87 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, or entity, who  
88 in good faith, has knowledge or reason to believe that an official has committed misconduct, may  
89 file a written complaint.

90 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,  
91 or was discovered to have occurred, within the previous ninety (90) days.

92 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall  
93 include the following information:

94 (a) The name(s) of the official alleged to have committed the misconduct;

95 (b) The entity or entities upon which the official serves;

96 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;

97 (d) The specific details of the official's misconduct;

98 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated  
99 by the official;

100 (f) Names of any witnesses of the alleged misconduct, or individuals who may have  
101 knowledge pertinent to the alleged misconduct;

102 (g) The contact information for the person filing the complaint, which at minimum shall  
103 include the person's name, address, and telephone number;

104 (h) A notarized sworn statement attesting that the information provided in and with the  
105 complaint is true, accurate, and complete to the best of the complainant's knowledge;

106 (i) Any supporting documentation; and

107 (j) Any other information required by the Nation's Rules of Civil Procedure if the  
108 complaint is alleging misconduct of an elected official.

109 120.5-4. *Where to File.*

110 (a) *Appointed Official.* Complaints against an appointed official shall be filed with the  
111 Business Committee Support Office.

112 (b) *Elected Official.* Complaints against an elected official shall be filed with the Nation's  
113 Trial Court.

114 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party  
115 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering  
116 testimony or evidence or complying with directives authorized under this law. Retaliation shall  
117 include any form of adverse or punitive action by or caused by, any official.

118 (a) If an individual alleges that retaliatory action has been threatened or taken based on the  
119 individual's complaint, or cooperation with directives authorized under this law, the  
120 individual may file a complaint for the retaliatory action in accordance with section 120.5  
121 of this law.

122 120.5-6. Any official who is the subject of a complaint has the right to be represented by an  
123 attorney or advocate, at his or her own expense, for any actions or proceedings related to the  
124 complaint.

125 120.5-7. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled  
126 in a confidential manner.

- 127 (a) All hearings and/or proceedings related to a complaint shall be closed to the general  
128 public.  
129 (b) All records of hearings and/or proceedings shall not be subject to public review or  
130 inspection. An official's record of conduct shall only be made available for review to the  
131 Oneida Business Committee and the Trial Court.  
132 (c) *Exception.* A decision of the Trial Court or the Oneida Business Committee regarding  
133 a complaint alleged against an official, and any sanctions and/or penalties that are imposed  
134 against an official, shall be public information.  
135

## 136 **120.6. Complaints Alleged Against an Appointed Official**

137 120.6-1. Due to the fact that an appointed official serves at the discretion of the Oneida Business  
138 Committee, all complaints alleged against an appointed official shall be handled by the Oneida  
139 Business Committee.

140 120.6-2. *Receipt of Complaint.* Upon receiving a complaint, the Business Committee Support  
141 Office shall:

142 (a) immediately forward copies of the complaint, including any supporting documentation,  
143 to:

- 144 (1) all members of the Oneida Business Committee for review; and  
145 (2) the individual who is the subject of the complaint.

146 (b) place the complaint on the executive session portion of the agenda of a regular or  
147 special meeting of the Oneida Business Committee for an initial review which shall occur  
148 within thirty (30) business days after the initial receipt of a complaint.

149 120.6-3. *Mediation.* The complainant or the official who is the subject of the complaint shall have  
150 up to five (5) business days after the initial receipt of the complaint to contact the Business  
151 Committee Support Office and request mediation.

152 (a) If both the complainant and the official who is the subject of the complaint agree to  
153 mediation, then the Business Committee Support Office shall schedule a mediation  
154 between the parties. The intent of this mediation meeting is to resolve the complaint prior  
155 to commencing an initial review.

156 (b) The Business Committee Support Office shall utilize a trained mediator to facilitate  
157 the mediation meeting. Every mediator shall have at least twenty-five (25) hours of  
158 mediation training or at least three (3) years of experience in dispute resolution.

159 (c) The mediation shall occur before the investigatory hearing is scheduled to take place.

160 (d) If a resolution is reached during mediation, the Oneida Business Committee shall be  
161 informed of the resolution before the initial review and the complaint shall be formally  
162 dismissed during the initial review.

163 (e) If the matter is not resolved through mediation, the initial review shall occur as  
164 prescribed by this law.

165 120.6-4. *Answer to the Complaint.* The individual who is the subject of the complaint shall have  
166 ten (10) business days after receiving his or her copy of the complaint, to submit to the Business  
167 Committee Support Office a written answer setting forth any admission, denial, affirmative  
168 defense, or other relevant information upon which the official intends to rely during proceedings  
169 related to the complaint.

170 (a) The Business Committee Support Office shall immediately forward the answer and  
171 any supporting documentation to all members of the Oneida Business Committee upon  
172 receipt from the individual who is the subject of the complaint.

173 120.6-5. *Conflict of Interest.* An Oneida Business Committee member that has a conflict of  
174 interest in a complaint brought before the Oneida Business Committee, shall immediately recuse  
175 himself or herself and shall not participate in any portion of the complaint process.

176 (a) Failure of an Oneida Business Committee member to recuse themselves due to a  
177 conflict of interest shall constitute grounds for sanctions and/or penalties.

178 120.6-6. *Initial Review.* The Oneida Business Committee shall perform an initial review of an  
179 allegation of misconduct on the part of an official. The purpose of the initial review shall be to  
180 determine whether the allegation made within the complaint has merit.

181 (a) During the initial review the Oneida Business Committee shall review the complaint  
182 and the written answer; as well as any supporting documentation.

183 (b) In order to determine if a complaint has merit, the Oneida Business Committee will  
184 discuss if whether assuming the facts alleged are true, said facts would support a  
185 determination of misconduct.

186 (c) The Oneida Business Committee shall determine, by majority vote, whether the  
187 complaint has merit.

188 (1) Upon a finding that the complaint has merit, the Oneida Business Committee  
189 shall schedule an investigatory hearing to consider the specific allegations  
190 identified in the complaint.

191 (A) The investigatory hearing shall occur within thirty (30) business days  
192 after the initial review has concluded and shall take place during the  
193 executive session portion of the agenda of a regular or special meeting of  
194 the Oneida Business Committee.

195 (2) Upon finding that a complaint has no merit, the Oneida Business Committee  
196 shall dismiss the complaint. The Oneida Business Committee shall send notice that  
197 the complaint was dismissed to the complainant and the official who is the subject  
198 of the complaint within five (5) business days.

199 (A) If the Oneida Business Committee dismisses the complaint based on a  
200 determination that the complaint was frivolous, false, or made with a  
201 malicious intent, the complainant may be subject to:

202 (i) a fine not to exceed five hundred dollars (\$500);

203 (ii) prohibition from filing another complaint for a period of time  
204 not to exceed one (1) year; and/or

205 (iii) a civil suit in the Nation's Trial Court brought by the official  
206 accused by the frivolous, false or malicious allegation.

207 120.6-7. *Notice of the Investigatory Hearing.* The Business Committee Support Office shall  
208 provide the complainant, the official who is the subject of the complaint, and any other individual  
209 compelled to attend the hearing with written notice of the date and the time of the investigatory  
210 hearing at least ten (10) business days before the investigatory hearing.

211 120.6-8. *Investigatory Hearing.* The purpose of the investigatory hearing is for the Oneida  
212 Business Committee to determine if there is enough evidence to substantiate the allegations of  
213 misconduct by clear and convincing evidence.

214 (a) When conducting an investigatory hearing, the Oneida Business Committee shall have  
215 the broadest grant of authority to compel any person or organization within the Nation to:

216 (1) appear at the hearing to provide testimony under oath and/or information  
217 relevant to the allegations against the official; and/or

218 (2) produce physical evidence that is relevant to the allegations.

219 (b) The Oneida Business Committee shall provide an opportunity for the official who is  
220 the subject of the complaint to answer all allegations and to provide witness testimony,  
221 documents, and other evidence on his or her own behalf.

222 (c) The Oneida Business Committee shall also provide the complainant the opportunity to  
223 answer questions, provide witness testimony or additional information, and/or to otherwise  
224 speak on his or her own behalf.

225 (d) The hearing shall be informal and conducted as the interests of justice so require, and  
226 shall be recorded by the Business Committee Support Office.

227 120.6-9. *Deliberation of the Oneida Business Committee.* At the conclusion of the investigatory  
228 hearing, the Oneida Business Committee shall excuse everyone from executive session for the  
229 deliberation of the Oneida Business Committee. Prior to making a final determination as to  
230 whether to substantiate the complaint, the Oneida Business Committee shall:

231 (a) consider all evidence and information provided, and shall have a full and complete  
232 discussion of all aspects of the complaint and answer; and

233 (b) have a full and complete discussion of all potential sanctions and penalties that may be  
234 imposed, if appropriate.

235 120.6-10. *Determination by the Oneida Business Committee.* After the investigatory hearing has  
236 concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee  
237 shall in open session of a regular or special Oneida Business Committee meeting, by majority vote,  
238 declare whether the Oneida Business Committee has determined there is enough evidence to  
239 substantiate the allegations of misconduct by clear and convincing evidence.

240 (a) If the Oneida Business Committee finds that there is clear and convincing evidence that  
241 the official engaged in misconduct, the Oneida Business Committee shall, by majority vote,  
242 determine and impose appropriate sanctions and/or penalties.

243 (b) If the Oneida Business Committee does not find that there is clear and convincing  
244 evidence to support the allegations that the official engaged in misconduct, the complaint  
245 shall be dismissed.

246 (c) Within ten (10) business days after the investigatory hearing, the Oneida Business  
247 Committee shall issue a written decision and provide copies of the decision to:

248 (1) the complainant,

249 (2) the official who is the subject of the complaint, and

250 (3) the Business Committee Support Office, for recordkeeping.

251 120.6-11. *Appeal.* The complainant and the official who is the subject of the complaint shall both  
252 have the right to appeal the Oneida Business Committee's decision to the Court of Appeals  
253 pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of  
254 the record, and the Oneida Business Committee's decision may only be overturned if the Court of  
255 Appeals determines that:

256 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,  
257 or made on unreasonable grounds or without any proper consideration of circumstances;  
258 or

259 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

260

## 261 **120.7. Complaints Alleged Against an Elected Official**

262 120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of  
263 elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to  
264 the Nation's Rules of Civil Procedure.

265 120.7-2. In a civil action against an elected official for misconduct, the complainant has the burden  
266 of proving by clear and convincing evidence that the official engaged in misconduct.

267 120.7-3. In making a final determination, the Trial Court shall determine if there is enough  
268 evidence to substantiate the allegations of misconduct by the official by clear and convincing  
269 evidence.

270 (a) If the Trial Court finds that there is clear and convincing evidence that the official  
271 engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or  
272 penalties deemed appropriate in accordance with this law.

273 (b) If the Trial Court does not find that there is clear and convincing evidence to support  
274 the allegations that the official engaged in misconduct, the complaint shall be dismissed.

275 120.7-4. *Appeal*. The complainant and the official who is the subject of the complaint shall both  
276 have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's  
277 Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial  
278 Court's decision may only be overturned if the Court of Appeals determines that:

279 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,  
280 or made on unreasonable grounds or without any proper consideration of circumstances;  
281 or

282 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

283 120.7-5. The Trial Court shall provide the Business Committee Support Office a copy of the  
284 complaint and the determination of the Trial Court for the official's record of conduct in office.  
285

## 286 **120.8. Sanctions and Penalties**

287 120.8-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed  
288 upon the Nation's officials for misconduct in office, in accordance with this law.

289 120.8-2. Sanctions and penalties may include:

290 (a) *Verbal Reprimand*. A verbal reprimand may be imposed on the official.

291 (1) The Oneida Business Committee or Trial Court shall submit written notices to  
292 both the official and to the Business Committee Support Office of the specific date,  
293 time and location of the verbal reprimand. The verbal reprimand shall occur at an  
294 Oneida Business Committee meeting and/or a General Tribal Council meeting.

295 (2) To impose the verbal reprimand, the presiding Oneida Business Committee  
296 Chairperson, or another Oneida Business Committee member if the verbal  
297 reprimand is imposed against the presiding Oneida Business Committee  
298 Chairperson, shall read a statement that identifies:

299 (A) The Oneida Business Committee or Trial Court's findings regarding the  
300 specific actions or inaction taken by the official that were found to be  
301 misconduct;

302 (B) The reasons why the official's actions or inactions amounted to  
303 misconduct;

304 (C) A statement identifying that the misconduct violates the high standards  
305 of behavior expected of the Nation's officials and is not acceptable; and

306 (D) A direction to the official to refrain from engaging in future misconduct.

307 (b) *Public Apology*. The official may be ordered to make a public apology. The Oneida  
308 Business Committee or Trial Court shall submit written notices to both the official and to  
309 the Business Committee Support Office of the specific date, time and location of the public  
310 apology. The public apology shall occur at an Oneida Business Committee meeting and/or  
311 a General Tribal Council meeting. The public apology shall:



- 312 (1) identify the specific misconduct committed by the official;  
313 (2) recognize that the official's actions or inactions were wrong;  
314 (3) identify the effects of the official's misconduct; and  
315 (4) include a clear and unambiguous apology from the official.
- 316 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication  
317 on the Nation's official media outlets, as determined by the Oneida Business Committee.  
318 The Oneida Business Committee or the Trial Court may publish a written reprimand which  
319 includes the information required for the verbal reprimand as stated in section 120.8-  
320 2(a)(2)(A)-(D).
- 321 (d) *Suspension*. An official may be suspended from performing his or her duties as an  
322 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if  
323 the official serves in a full-time capacity.
- 324 (1) During a suspension, the official shall not:
- 325 (A) attend meetings, trainings or any other event as part of the entity;  
326 (B) attend conferences or other events on behalf of, or as a representative  
327 of, the entity;  
328 (C) vote or participate in any activities of the entity;  
329 (D) perform work on behalf of the entity; or  
330 (E) be eligible for any compensation, including regular pay, stipends, or  
331 mileage reimbursement.
- 332 (2) When an official is suspended, the Oneida Business Committee or Trial Court  
333 shall submit written notices to both the official and to the Business Committee  
334 Support Office of the specific start and end date of the suspension.
- 335 (3) If a suspension is imposed on multiple officials of the same entity at one time,  
336 the Oneida Business Committee or the Trial Court shall impose the suspensions of  
337 the officials on a staggered basis to avoid an interruption of the official business  
338 and function of the entity.
- 339 (e) *Restitution*. An official may be ordered to pay restitution, which may include the  
340 repayment of any improperly received benefit, or any other payment which is intended to  
341 make another whole after suffering losses as a result of the official's misconduct.
- 342 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five  
343 hundred dollars (\$2,500).
- 344 (1) Fines shall be paid to the Trial Court.  
345 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld  
346 on final appeal, whichever is later. Cash shall not be accepted for payment of fines.  
347 If the fine is not paid by this deadline, the Trial Court may seek to collect the money  
348 owed through the Nation's garnishment and/or per capita attachment process.  
349 (3) Money received from fines shall be deposited into the General Fund.  
350 (4) Community service may be substituted for part or all of any fine at the minimum  
351 wage rate of the Nation for each hour of community service.
- 352 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service  
353 on an entity not to exceed two (2) meetings.
- 354 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and  
355 complete a training class or program that will assist the official in addressing and  
356 improving his or her behaviors and/or actions.

357 (1) The mandated training class or program may address a variety of topics  
358 including, but not limited to, anger management, sexual harassment, or other  
359 sensitivity training.

360 (i) *Termination of Appointment.* An appointed official may have his or her appointment  
361 terminated by the Oneida Business Committee in accordance with the Nation's laws and/or  
362 policies governing boards, committees, and commissions.

363 (j) *Removal.* The Trial Court may recommend that the process for removing an elected  
364 official as contained in the Nation's laws and/or policies governing removal be initiated.

365 120.8-3. *Factors in Determining an Appropriate Sanction and/or Penalty.* When determining the  
366 appropriate sanction or sanctions to impose, the Oneida Business Committee or the Trial Court  
367 may consider all factors it deems relevant, including but not limited to:

- 368 (a) the seriousness or severity of the misconduct;
- 369 (b) whether the conduct was intentional or not;
- 370 (c) the likelihood of repetition;
- 371 (d) the extent of probable damage to the finances or reputation of the Nation, the  
372 complainant, the entity, or to any other person or organization;
- 373 (e) whether the official or his or her family personally profited, financially or otherwise,  
374 from the prohibited conduct;
- 375 (f) the official's remorse, or
- 376 (g) the official's willingness and ability to take steps to mitigate the harm caused by the  
377 violation, and
- 378 (h) any prior complaints filed, including any previous sanctions and penalties imposed  
379 upon the official while serving on an entity.

380 120.8-4. The Oneida Business Committee and/or the Trial Court may impose a sanction and/or  
381 penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall  
382 prevent the imposition of a more stringent or burdensome sanction and/or penalty.

383 120.8-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt  
384 an official from individual liability for the underlying misconduct, and does not limit any penalties  
385 that may be imposed in accordance with other applicable laws. In addition to any sanctions and  
386 penalties that may be imposed in accordance with this law, officials who commit misconduct in  
387 office may be subject to other consequences; including but not limited to:

- 388 (a) removal in accordance with the Nation's laws and/or policies governing removal, if an  
389 elected official;
- 390 (b) termination of appointment by the Oneida Business Committee, if an appointed official;
- 391 (c) criminal prosecution, for misconduct that also violates applicable criminal law;
- 392 (d) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- 393 (e) penalties for specific misconduct as authorized by any other law of the Nation.

394 120.8-6. An official who does not comply with a sanction and/or penalty that has been imposed  
395 against him or her by either the Oneida Business Committee or Trial Court may be subject to the  
396 following:

- 397 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed  
398 in accordance with this Law based on the non-compliance;
- 399 (b) termination of appointment by the Oneida Business Committee in accordance with the  
400 Nation's laws and policies governing boards, committees, and commissions, if the official  
401 was appointed to his or her position; and/or
- 402 (c) removal in accordance with the Nation's laws and policies governing removal, if the  
403 official was elected to his or her position.

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**120.9. Effect of Resignation by an Official**

120.9-1. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by either the Oneida Business Committee or Trial Court.

120.9-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion of the Oneida Business Committee or Trial Court.

**120.10. Record of Conduct in Office**

120.10-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.

120.10-2. The record of conduct in office maintained for each official shall include, at a minimum:

- (a) a copy of each complaint filed against the official;
- (b) recording and/or transcript from any hearings and/or proceedings;
- (c) the outcome of the complaint, and
- (d) any sanctions or penalties imposed upon an official.

120.10-3. The record of conduct in office for each official shall be maintained for a period of no less than seven (7) years.

*End.*

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Adopted – GTC-\_\_-\_\_-\_\_-\_\_

# FINANCE ADMINISTRATION

## Fiscal Impact Statement



# MEMORANDUM

TO: Larry Barton, Chief Financial Officer  
 Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Rae Skenandore, Financial Management Analyst

DATE: December 27, 2018

RE: **Fiscal Impact of the Sanctions and Penalties Law**

## I. Estimated Fiscal Impact Summary

<b>Law:</b> Sanctions and Penalties Law		Draft 4
<b>Implementing Agency</b>	Oneida Business Committee Business Committee Support Office Oneida Judiciary	
<b>Estimated time to comply</b>	In compliance with the Legislative Procedure Act	
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>Ten Year Estimate</b>
<b>Total Estimated Fiscal Impact</b>	None	None

## II. Background

### Legislative History

This is a new Law that was originally placed on the Legislative Operating Committee active files list on October 15, 2014. A public meeting was held on October 4, 2018.

### Summary of Content

A summary of the Law is as follows;

- A. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.
- B. The Law applies to all elected or appointed Boards, Committees, and Commissions.

C. This law does not apply to members of the Judiciary or corporate entities of the Nation.

D. The definition of misconduct contained in the Law includes but it not limited to the following violations of Oneida Laws, policies, rules, by-laws, SOP's, other operating documents, Federal and State Criminal or Civil law and expected moral and ethical standards.

E. Complaint Process and Requirements

1. Individuals must be over 18 years old to file a complaint.
2. Allegations must have occurred within the last 90 days.
  - a) The Law outlines the requirement for the content of the complaint and where to file
3. Prohibits retaliation
4. Allows for an attorney or advocate
5. Is held confidential until/unless a final determination and sanctions and/or penalties are imposed.
6. The process differentiates complaints against appointed official's vs elected officials.

F. Complaints against appointed officials

1. The complaint process is conducted through the Oneida Business Committee and includes the following:
  - a) Filing with the Business Committee Support Office.
    - (1) Notification requirements;
    - (2) Allowance for mediation;
    - (3) Timelines to respond;
    - (4) Recusal requirements for a conflict of interest.
  - b) An Initial review to determine a finding of merit
    - (1) An investigatory hearing shall be held within 30 days for a complaint determined to have merit.
    - (2) Where there are findings of no merit, the Business Committee shall review the complaint for a determination of frivolous, false, or malicious complaint. If found, the complainant may be subject to the following:



- (3) be fined up to five hundred dollars (\$500);
  - (4) be banned from filing a complaint for up to one year;
  - (5) be subject to a civil suit.
- c) Investigatory hearing.
- (1) The Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to
    - (a) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or
    - (b) produce physical evidence that is relevant to the allegations
  - (2) Within the investigatory hearing section, the law contains criteria for deliberations, determination, and appeals.
    - (a) The standard for the complaint is “clear and convincing evidence”.
    - (b) The Oneida Business Committee determines and imposes appropriate sanctions and/or penalties.
- G. Complaints against elected officials
- 1. Complaints are filed with the Trial Court pursuant to the Nations Rules of Civil Procedures.
  - 2. Decisions on filed complaints against elected officials may be appealed to the Court of Appeals pursuant to the Nation’s Rules of Appellate Procedure.
  - 3. Official court records must be submitted to the Business Committee Support Office.
- H. Sanctions and Penalties may include the following:
- 1. Verbal reprimand.
  - 2. Public apology.
  - 3. Written reprimand.
  - 4. Suspension.
  - 5. Restitution.

6. Fines not to exceed two thousand five hundred dollars (\$2,500) per act of misconduct.
7. Loss of stipend.
8. Mandatory participation in training.
9. Termination of appointment.
10. Removal.

*I.* The Law contains the factors to be used in determining appropriate Sanctions and/or Penalty as the following:

1. the seriousness or severity of the misconduct;
2. whether the conduct was intentional or not;
3. the likelihood of repetition;
4. the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
5. whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
6. the official's remorse, or
7. the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
8. any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

*J.* The Law states that the imposition of sanctions and penalties does not exempt officials from individual liability which may include but is not limited to:

1. removal in accordance with the Nation's laws and/or policies governing removal;
2. termination of appointment by the Oneida Business Committee;
3. criminal prosecution, for misconduct that also violates applicable criminal law;
4. civil liability, in accordance with the applicable law of any jurisdiction; and/or penalties for specific misconduct as authorized by any other law of the Nation.

*K.* Non-compliance may result in the following;

1. Additional sanctions and/or penalties.

2. Termination of appointment.
3. Removal in accordance with the Nation's laws.

*L.* Resignation does not impact the process or exempt individuals from sanctions and penalties.

*M.* Records of conduct shall be maintained by the Oneida Business Committee Support Office for no less than seven years.

### **III. Methodology and Assumptions**

A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

### **III. Executive Summary of Findings**

The separation of the complaint process duplicates this function within two areas of the Nation. However, aside from the additional duties, there are no other apparent startup, personnel, office, or documentation costs associated with duplicating this function with the approval of this legislation.

### **III. Financial Impact**

No fiscal impact.

### **IV. Recommendation**

Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.

# Sanctions and Penalties Law

Presentation to GTC by  
Legislative Operating Committee

February 24, 2019

## Why Sanctions & Penalties?

- If an official of the Nation engages in misconduct in office, there are few remedies to hold that official accountable.
  - Removal Law (if elected)
  - Termination of Appointment (if appointed)
- Not all violations rise to level of removal or termination.
- The Nation currently has no formal process to issue warnings, reprimands, or corrective actions against elected and appointed officials.
- Increased accountability and opportunity to correct behavior and become a better official.

## Cultural Background

- Great Law of Peace.
- Chief receives up to three warnings from Clan Mother.
  - Try to steer leader on the right path.
  - Opportunity to correct actions.
- After three warnings, the chief is dehorned, or removed.
- Goal is not to shame but to move forward in a good way.

## Current Landscape

- Most governments (tribal, local, state and federal) have some sort of sanctions process.
- Sanctions for officials discussed by GTC, previous Business Committees, and community as far back as 1998.
- During the Special Election held on July 9, 2016, the following referendum question was approved by a vote of 178 to 59:  
“Should the BC develop a law which provides for sanctions and due process for elected officials?”

## Development

- Research
- Work Meetings
  - Meetings w/Boards, Committees and Commissions
- Public Outreach
  - Community Potluck Meeting
  - Public Meeting

## What is Misconduct?

- Violating the Oneida Constitution or any law, policy or rule of the Nation;
  - For example, the Code of Ethics or Conflict of Interest Law
- Violating the bylaws or standard operating procedures of the entity the official serves on;
- Being convicted of a felony under federal or Wisconsin law;
- Any other activity that does not uphold the moral and ethical standards expected of the Nation's officials.

## Who Can be Sanctioned?

- Elected Officials of the Nation.
  - Including members of the Oneida Business Committee.
- Appointed Officials of the Nation.
- This law does not apply to:
  - Corporate entities of the Nation.
  - Judges of the Oneida Nation Judiciary.
    - Complaint Process for Judges located in Judiciary Law.

## Elected Officials

- Oneida Business Committee
- Oneida Election Board
- Oneida Gaming Commission
- Oneida Land Commission
- Oneida Land Claims Commission
- Oneida Nation Commission on Aging (ONCOA)
- Oneida Nation School Board
- Oneida Trust Enrollment Committee
- GTC Legal Resource Center Attorney and Advocates



## Appointed Officials

- Anna John Resident Centered Care Community Board
- Audit Committee (1 community member seat)
- Environmental Resource Board (ERB)
- Finance Committee (1 community member seat)
- Oneida Community Library Board
- Oneida Nation Arts Board
- Oneida Personnel Commission
- Oneida Police Commission
- Oneida Pow Wow Committee
- Oneida Nation Veterans Affairs Committee (ONVAC)
- Pardon and Screening Forgiveness Committee
- Southeastern WI Oneida Tribal Services Advisory Boards (SEOTS)
- Oneida Youth Leadership Institute Board of Directors

## Filing a Complaint

- **Who Can File:** Anyone 18 years and older who, in good faith, has knowledge or reason to believe that an official has committed misconduct may file a written complaint.
- **When To File:** Within 90 days of when the alleged misconduct occurred or was discovered to have occurred.
- **Where to File:**
  - Elected Officials – Judiciary Trial Court.
  - Appointed Officials – BC Support Office.

## Filing a Complaint



## Complaint Process: Elected Officials

- Complaint filed with the Nation's Judiciary Trial Court.
- Case proceeds according to Judiciary Rules of Civil Procedure:
  - Official files answer to the complaint.
  - Court may order pre-trial meeting and/or discovery.
  - Court holds a hearing.
  - Court issues judgment.
- If Trial Court finds official committed misconduct, the Trial Court selects appropriate sanction or penalty.
- Either party may appeal decision to Judiciary Court of Appeals.

## Complaint Process: Appointed Officials

- Complaint filed with BC Support Office.
- Complaint forwarded to BC Members and the Official.
- Official submits written response to complaint.
- BC performs initial review to determine if complaint has merit. If complaint has merit, BC schedules a hearing.
- BC holds investigatory hearing during executive session. After the hearing, BC deliberates.
- In open session, BC votes on whether misconduct occurred and selects appropriate sanction or penalty by majority vote.
- Either party may appeal decision to Judiciary Court of Appeals

## List of Sanctions & Penalties

- Verbal Reprimand
- Public Apology
- Written Reprimand
- Suspension
- Restitution
- Fines
- Loss of Stipend
- Mandatory Training
- Termination of Appointment
- Removal, in Accordance with Removal Law

## Additional Consequences

- Nothing in this law exempts an official from individual liability or penalties imposed in accordance with other laws.
- For example, officials who commit misconduct may be subject to other consequences, including but not limited to:
  - Criminal Prosecution, for misconduct that violates applicable criminal law.
  - Civil Liability, in accordance with applicable law.
  - Penalties for specific misconduct as authorized by any other law of the Nation.

## How is Penalty Selected?

- When imposing a sanction or penalty, the OBC or Judiciary may consider the following:
  - How severe the misconduct was, whether it was intentional, and how likely the official is to repeat the misconduct.
  - The damage to the finances or reputation of the Nation, entity, or any person or organization.
  - Whether the official has expressed remorse and is willing to take steps to correct the harm done.
  - Whether any prior complaints have been filed against the official.

## Protecting Due Process

- Officials accused of misconduct have the right to be represented by an attorney or advocate.
- Officials have the right to submit a written response to complaints against them, appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf.
- Complaints against officials must be proven by clear and convincing evidence.
- Appeals to Judiciary Court of Appeals

## Requested Action

Motion to adopt the Sanction and Penalties Law Resolution

Yaw^ko