# Oneida Tribal Judicial System

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**ONEIDA TRIBAL JUDICIAL SYSTEM**
**TRIAL COURT**

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**Michael T. Debraska,**
**Leah S. Dodge, and**
**Franklin Cornelius**
**Petitioners**

**Docket No: 14-TC-190**

**v.**

**Oneida Business Committee,**
**Oneida Law Office, and**
**Oneida Election Board**
**Respondents**

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**DECISION**
**Temporary Restraining Order**
**&**
**Preliminary Injunctive Relief**

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers: Jean M. Webster, Kathy Hughes, and Sandra Skenadore, presiding.

On November 13, 2014 a hearing was held.

Present were: Petitioner, Leah S. Dodge and Respondent, Attorney Rebecca Webster representing the Oneida Business Committee and Oneida Election Board.

## I Background

On November 5, 2014, Petitioners: Michael T. Debraska, Leah S. Dodge, and Franklin Cornelius filed a Temporary Restraining Order and a Preliminary Injunctive Relief against the Respondents: Oneida Business Committee, Oneida Law Office, and Oneida Election Board for a "Stay" on the November 22, 2014 Special Election.



Post Office Box 19 • Oneida, WI 54155
Phone: 920-497-5800 • Fax: 920-497-5805

On November 6, 2014, Petitioners filed an Amended Complaint.

On November 10, 2014, the Court granted the Petitioner's motion for a Temporary Restraining Order and a Preliminary Injunctive Relief for a "stay" of the November 22, 2014 Special Election. A hearing was held on November 13, 2014.

## II Analysis

On November 7 & 10, 2014, a deliberation was held. On the face of the pleadings, the Petitioners appear to have a valid claim. Petitioners allege due to the illegal actions taken by the Respondents at the October 26, 2014 General Tribal Council Meeting (GTC), an illegal election was scheduled. Petitioners claim in accordance with the Oneida Election Law, if there are 16 or more candidates for the OBC at-large member position a primary is to be held 60 days prior to the election. Petitioners sought a Preliminary Injunctive Relief asking for a stay of the November 22, 2014 Special Elections. Finally, the Petitioners requested the Parliamentarian for future GTC meetings to be an enrolled Oneida Tribe of Indians of Wisconsin member who is trained in the Robert's Rules of Order and is not an employee of the Tribe nor has neither familial nor financial connections to OBC, Oneida Law Office or Oneida Election Board. On the face of the pleadings the Court granted a Temporary Restraining Order and a Preliminary Injunction placing a stay on the November 22, 2014 Special Election. A hearing was scheduled for November 13, 2014.

On November 13, 2014 a hearing was held.

*Petitioner's Arguments:*

Petitioner, Leah S. Dodge, noted for the record the involvement of the Lead Judicial Officer Jean Webster and Respondents Attorney, Rebecca Webster is perceived by the Petitioner as a conflict of interest and further noted that in Petitioner's opinion history shows the Court will do what it wants.

Petitioner argues the General Tribal Council is the Supreme Governing Body of the Oneida Tribe of Indians of Wisconsin and not the Appeals Commission. Petitioner alleges the action taken on October 26, 2014, violated the Oneida Constitution. In order to make a proper decision the General Tribal Council (GTC) needs to be given the opportunity to have the information reheard.

Petitioner argues the Special Election scheduled for November 22, 2014 was illegally set. The Oneida Business Committee (OBC) did not follow the Oneida Election Law in setting a Special Election; OBC did not schedule a primary in accordance to the Oneida Election Law; OBC misled the GTC membership in the true cost in relation to all the options provided by OBC; and the re-vote for Option B was out of order as the GTC membership was misinformed when the re-vote for Option B was acted upon.

Petitioner further argues the 10-day notice policy was violated when GTC took action to reconsider Option B. Petitioner argues to overturn a previous action of the GTC the 10-day notice shall apply, and would require 2/3 vote for a vote to pass as the original motion to adopt Option B had failed.

Petitioner is also requesting the Court that a Parliamentarian for future GTC meetings be an enrolled Oneida Tribe of Indians of Wisconsin member who is trained in Robert's Rules of Order and is not an employee of the and nor has neither familial nor financial connections to OBC, Oneida Law Office or Oneida Election Board.

*Respondent arguments:*

Respondent argues the GTC decisions were entirely within the Oneida Constitution and within the Oneida Tribal laws and policy.

Respondents argued the Petitioners had an opportunity to address any questions or concerns at the GTC meeting, but chose to wait until after the GTC meeting, until after the caucus, and until after the notice of who was running for the vacant position to file their claim.

Respondent argues the GTC membership received the GTC packet in accordance with the 10-day notice policy. GTC members were all duly noticed of the options available to fill the OBC vacancy with Option B being noticed to GTC as an Accelerated Special Election with caucus being held on 10/26/14; GTC was noticed of the approximate cost; and GTC was provided a copy of the Oneida Election Law. Respondent asserts the GTC was justified in choosing to fill the vacant Business Committee seat through an election without a primary because the notice claimed the special election would be "accelerated" thereby notifying tribal members there would be no primary.

Respondent also argues the GTC is the Supreme Governing Body for the Oneida Tribe of Indians of Wisconsin and the Oneida Constitution. The Oneida Constitution says that the GTC may fill any vacancy that occurs on the Oneida Business Committee.

Respondent further argues the Oneida Tribal Judicial System does not have jurisdiction. In support the Respondent cites *Racquel Hill v OBC and GTC*, Case No. 13-TC-131 (2013). Petitioner's claim in this case was dismissed as the Court ruled the Oneida Tribal Judicial System does not have jurisdiction to review internal procedural matters of the General Tribal Council. Respondent also cited case number #00-TC-0004, *Ed Delgado v. OBC*, Case No 00-TC-0004 (2000). The case was dismissed as panel ruled the Appeals Commission is without jurisdiction to intervene on internal General Tribal Council matters.

## Findings of Fact

The facts are not in dispute. On September 12, 2014, Business Committee member Ben Vieau resigned his seat several weeks after being sworn in. A special General Council Meeting was held on October 26, 2014 to determine his replacement.

Along with notice of the meeting, the General Council was mailed a number of options identified by letter which ranged from doing nothing and leaving the seat empty, to holding a special election to selecting the replacement at the meeting that day.

The General Council chose Option B which was to hold a Special Election on November 22, 2014. During the selection of Option B at the meeting there was allegedly some confusion about whether the vote for Option B was a vote for reconsideration and what that meant. In other words, whether the vote was to actually adopt Option B or simply a vote on whether to reconsider Option B. The vote went forward and Option B was considered adopted.

We incorporate and adopt by reference the exhibits submitted by both parties into our Findings of Facts.

## Conclusion of Law

***1. Recusal***

Petitioners seek Judicial Officer Jean Webster's recusal based on the fact that counsel for the Respondents, Ms. Rebecca Webster, is Judicial Officer Webster's niece-in-law. That request is denied.

Article VI, Sec. 6-1, states a judicial officer can be removed from a proceeding in which their impartiality might reasonably be questioned and it gives a list of instances. According to Sec. 6-1(c), removal is necessary if a Judicial Officer is a reasonably close family member of a party or someone involved in the litigation. In this instance, Attorney Webster is married into the Judicial Officer's extended family.

The Trial Court is unique in that it has three judges for every trial. Having three judges minimizes the influence of personal bias, conflict of interest and prejudicial notions. Attorney Webster has practiced before Judicial Officer Jean M. Webster numerous times without recusal issues from the other party and has always disclosed the relationship.

Furthermore, this same issue has been looked at before by the Appellate Court and no appellate panel has ever required Judicial Officer Webster to recuse herself. In *Leah Dodge, Cathy*

*Metoxen, and Michael Debraska v. Oneida Business Committee*, 13-AC-019 (2013), the Appellate Court ruled and stated in part,

> ....the 'reasonably close family member' verbiage in the Oneida Tribal Judicial Code of Conduct, Article VI would include a niece-in-law and nephews-in-law as in this case and would be just cause for recusal. However, there is no definition of what constitutes reasonably close. Accordingly, Petitioners' notice for recusal is denied."

Accordingly, Petitioners request for recusal is denied.

***2. Jurisdiction***

Does the Oneida Tribal Judicial System have jurisdiction to decide on matters addressed at a General Tribal Council meeting?

The Court does not have jurisdiction to review the internal operations of the General Council; however it does have jurisdiction to review the enactments of that body to ensure they are in compliance with the Constitution and other applicable law, especially here when the Respondents are properly before the Court and are carrying forward a GTC enactment.

The motion for Temporary Restraining Order and Preliminary Injunction was granted by the Court based on the face of the pleadings and low burden at that stage of the proceedings. The Court issued a Temporary Restraining Order and Preliminary Injunction that placed a stay on the November 22, 2014 Special Elections until a hearing was held.

There are no laws, ordinances, or rules that allow the Court to intervene with respect to the procedural questions surrounding the selection of Option B. The Trial Court previously ruled in *Racquel Hill v OBC/General Tribal Council*, 13-TC-131 (2013), that questions involving internal GTC procedures are political matters that need to be addressed within the GTC. The Trial Court further notes the decision in *Ed Delgado v OBC*, 00-TC-0004 (2000), which also finds the Appeals Commission is without jurisdiction to intervene in internal GTC matters.

The Petitioners state in order to make a proper decision the General Tribal Council needs to be

given the opportunity to have the information reheard. Petitioners may petition for a GTC meeting to re-address the actions of October 26, 2014.

The Court further finds, as it did in *Racquel Hill v OBC/General Tribal Council*, 13-TC-131 (2013) that Petitioners did not establish how the Court has jurisdiction to review the internal rules and procedures of the General Tribal Council.

Accordingly, Petitioners' requests are denied with respect to the alleged confusion surrounding the adoption of Option B and whether the GTC's procedures were properly followed. There were and are other remedies available to Petitioners to address those issues.

***3. Option B***

The final issue we decide is whether the GTC enactment of Option B is legal and valid in light of the fact that it conflicts with current Oneida election law. Specifically, the Oneida Election Ordinance requires a primary when there are 16 or more candidates (Sec. 2.12-2) and also requires that all Special Elections follow all the rules for General Elections (Sec. 2.12-12). Option B is essentially a self-contained special law which lays out an election timeline, rules and other conditions for the special election to fill the Business Committee vacancy. At the time this case was filed there were 16 candidates; however no primary was being held. The schedule as adopted by the GTC did not allow for a primary to be held, regardless of the number of candidates.

Both Petitioners and Respondents argue that because the General Tribal Council is, in their words, the "Supreme" Governing body, their arguments should prevail. We note that while the General Council has a great amount of power, nowhere in the Oneida Constitution is the General Council described as the "Supreme Governing Body" of the Tribe. Rather, the General Council is a branch of the government with specifically identified powers. See Art. IV, Oneida Constitution. Respondent further argues that language in Article III exempts Option B from the general requirements of the Election Ordinance. With respect to the General Council's power to fill a vacant seat on the Business Committee, Article III states: "The General Tribal Council may

at any regular or special meeting fill any vacancies that occur on the Business Committee for the unexpired term." Respondent argues this language essentially exempts the General Council from complying with the existing provisions of the Election Ordinance.

Regardless of the language in Article III, we conclude that the General Council has the power to enact law which is inconsistent or even in conflict with existing law. That is what has happened here. Although not identified as an ordinance, Option B has the force of law as it is a General Council enactment. The General Council decided to enact a specific law which would address the Business Committee vacancy by holding a Special Election. Both the Election Ordinance and Option B are GTC enactments and thus on equal footing with each other. When laws conflict, we follow the general rule that specific later legislation will govern over earlier general legislation. See, e.g., *United States v. Estate of Romani*, 523 U.S. 517, 532 (1998).

Option B is the more specific later legislation and thus trumps the earlier general legislation in the form of the Election Ordinance.

## IV Decision

The Court rules in favor of the Respondents. The stay is lifted. Petitioner's claims are denied.

IT IS SO ORDERED.

By the authority vested in the Oneida Tribal Judicial System pursuant to Resolution 8-19-91A of the General Tribal Council a hearing held on November 13, 2014 and an decision signed on the 15th day of December, 2014 in the matter of *Michael Debraska, Leah S. Dodge, and Franklin Cornelius v Oneida Business Committee, Oneida Law Office, and Oneida Election Board*, Docket Number 14-TC-190.

Jean M. Webster, Lead Judicial Officer

Kathy Hughes, Judicial Officer

Sandra Skenadore, Judicial Officer