

A Restatement Of The Law Of The Little Traverse Bay Bands Of Odawa Indians, 2015 Volume

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I. Introduction to the Restatement

BACKGROUND

The Little Traverse Bay Bands of Odawa Indians (“LTBB” or “Tribe”) is a federally-recognized American Indian tribe of Odawa Indians located primarily in the Great Lakes region of the State of Michigan.² Most of the Tribe’s more than 4,000 enrolled citizens reside in the State’s Charlevoix and Emmet Counties.³ The Tribe is one of several federally-recognized and distinct Odawa political entities located within the territorial boundaries of Michigan; others include the Little River Band of Ottawa Indians and the Grand Traverse Band of Ottawa and Chippewa Indians, located on ceded lands in present-day Manistee, Michigan and Peshawbestown, Michigan, respectively.

Like many other American Indian peoples and tribes in what is now the United States, the LTBB have been the subject of government-sponsored removal and discriminatory education efforts.⁴ These efforts resulted early on in many Odawak being removed from their homelands—often being relocated to the southern United States—and, in more recent history, in Odawa children being removed from their families to obtain a western education and upbringing.⁵

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² A Tribal History and Timeline of the Little Traverse Bay Bands of Odawa Indians 1 (2011).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Apart from imposing removal and discriminatory education practices on the Odawak, the United States has also failed to faithfully enforce the spirit and text of its 1855 Treaty with the Odawa, specifically declining to recognize the Tribe for over 150 years.⁶ Over the past 150 years, however, the Tribe has made great strides to regaining its sovereignty, with these efforts culminating in the Federal government reaffirming its government-to-government relationship with the Tribe in 1994.⁷

While the Tribe recognizes that its efforts to regain sovereignty are expensive, Tribal leaders and elders have nonetheless aggressively moved to provide resources for their fellow citizens. Of these efforts, the Tribal Judicial system is a good example of the level of dedication that the Tribe puts into providing resources to Tribal citizens. Established in its current form under the Tribe's 2005 Constitution as one of three separate branches of government, the Tribal Judicial system is comprised of a Tribal Court, which is a court of general jurisdiction overseen by the Tribe's Chief Judge and Associate Judge; an Appellate Court, on which three appellate justices sit; and other lower courts that the Tribal Council may establish.⁸ The Tribal Judicial system is charged with interpreting and applying the laws of the Tribe, which gives the Tribal courts the ability to significantly impact the lives of Tribal citizens.⁹ This impact is seen daily in matters and cases ranging from general quality of life issues to complex contractual disputes to substance abuse and child welfare matters.

This Restatement of the Law of the Little Traverse Bay Bands of Odawa Indians is part of a continuing effort to provide resources and information to Tribal Citizens and others who rely on the Tribal government, including non-Tribal attorneys litigating cases and others, whether American Indians or not, utilizing the LTBB Judicial system.

I hope that this restatement will serve to improve, through increased knowledge of the Tribe's law and custom, collaboration and cooperation between the Tribe and the state and local governments that often work with the Tribe.

METHODS

⁶ *Id.*

⁷ *Id.*; See Renee A. Cramer, *Cash, Color and Colonialism: The Politics of Tribal Acknowledgement* 44 (2005). Little Traverse Bay Bands of Odawa Indians and Little River Band of Ottawa Indians Act, 25 USC § 1300k *et seq.*

⁸ LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. IX, §§ A(1), (2), and (3).

⁹ LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. VI, § C.

This restatement was compiled following extensive research of the Tribe's Appellate Court decisions effective under the 2005 Tribal Constitution as well as opinions issued by the Tribal Court before that time until the present. Consistent with other restatement projects, the Appellate Court and Tribal Court decisions were reviewed for their legal conclusions, including conclusions that expand the Tribal Judiciary's and Tribal citizenry's understanding and application of codified law. Special care was taken to identify and account for conflicting legal conclusions as a means of presenting the Appellate Court's and Tribal Court's clearest interpretations of the law. It should be noted, however, that this project serves as a restatement of the Tribe's law, and includes interpretations of statutory and constitutional law by the Appellate Court and Tribal Court. This restatement does not represent an exhaustive listing of the law applicable to the Tribe, and persons reviewing the restatement should always check the relevant Tribal law, including statutes codified in the Tribal Code,¹⁰ for legal provisions and theories not noted by the Appellate Court and Tribal Court, but that which may still be pertinent to an issue at hand.

While this project has key similarities to traditional restatement projects, there are key differences that must be discussed. Specifically, unlike other restatement projects, which may cover one subject matter rather exhaustively—for instance, the Restatement (Second) of Torts—this restatement of the law covers multiple subject areas, acknowledging the many and varied legal realities present in the LTBB system of law. Such an extensive inclusion of various legal principles is possible, in part, due to the relatively young history of the LTBB since its government-to-government relationship with the United States was reaffirmed in 1994. As the LTBB continues to grow and develop its law, further restatement projects may very well cover single areas of the law in more narrowly-focused editions.

Those reviewing the restatement project will note that, in addition to the various legal subject areas covered in the project, care is taken to assist the reader in better understanding the meaning of legal principles and how they apply in the real world. As such, subsections of the restatement may contain comments and, where appropriate, illustrations of why and how certain legal principles apply. Some comments restate the rationale for adopting certain legal principles as articulated by LTBB courts, while others may additionally or separately discuss practical implications of the adoption of certain legal principles. Illustrations provide basic examples, which should not be accepted as certain outcomes for potential cases heard in LTBB courts—though some illustrations follow cited actual cases heard in LTBB courts rather closely—of how the legal principles at issue have or may be applied in LTBB courts. Still, not every subsection contains comments and or illustrations as they may not require them in order for readers to understand the legal principles within and how they apply.

¹⁰ The Little Traverse Bay Bands of Odawa Indians Tribal Code may be found online at <http://www.ltbbodawa-nsn.gov/TribalCode.pdf>.

This is only a first effort at a restatement of the law of the Little Traverse Bay Bands of Odawa Indians. It is my hope that this project is regularly updated to reflect the current law of the Tribe as it continues to evolve.

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II. A Restatement of the Law of the Little Traverse Bay Bands of Odawa Indians

A. § 1 Contempt of Court

§ 1.01[A] Civil Contempt of Court Generally

The Court may find an individual it has jurisdiction over in civil Contempt of Court for failure to comply with an order of the Court, if the individual's act or omission was fully contemptuous, or the act was preceded by a clear warning by the Court that the conduct in question was improper.

Comment:

1. The LTBB's law of civil contempt provides its courts with tools to regulate individual conduct before the Court as well as compliance with Court orders generally. While contempt proceedings may be initiated against any person that the Court has jurisdiction over, United States Supreme Court precedent has limited the civil authority of Indian tribes over non-Indians. Under Supreme Court jurisprudence, Indian tribes may only exercise civil jurisdiction over non-Indians who enter into "consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements" or where conduct by non-Indians "threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe."¹¹ Although the Supreme Court's pronouncement, in theory, grants tribes expansive authority over Indians and non-Indians alike, in practice the doctrine has eroded the historic legal authority that Indian tribes had over outsiders conducting business within their territories.¹²

¹¹ *Montana v. U.S.*, 540 U.S. 544, 565-566 (1981).

¹² *See, eg, Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (noting that modern government-to-government relationships between Indian tribes and the Federal government divested Indian tribes of the authority to exercise criminal jurisdiction over non-Indians, unless authorized to do so by Congress).

Illustrations:

1. A member of a federally-recognized tribe appearing before the LTBB Court has been instructed by the Court to refrain from engaging in certain specified conduct. Despite clear warnings from the Court on the matter, however, the member engages in the behavior anyway. As a result, the Court is authorized to hold the member in civil Contempt of Court.
2. A non-Indian attorney who has been admitted to practice law before LTBB courts, and as such has agreed to follow the laws of the LTBB and to show respect to its courts and legal process, is dishonest to the Court, thus violating the attorney's duty of candor to the tribunal. The attorney's admission to practice before the Court, which serves as a contractual obligation on the attorney to follow LTBB law and to respect the Court, authorizes the Court to initiate contempt proceedings against the attorney for behavior that violates the law of contempt.

Case and Statutory Citations:

1. *Little Traverse Bay Bands of Odawa Indians Tribal Court v. Rodriguez*, No. C-154-1112 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Dec. 6, 2012).
2. *Little Traverse Bay Bands of Odawa Indians Tribal Court v. Lopez*, No. TR-017-0414 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. June 16, 2014).
3. *People of the Little Traverse Bay Bands of Odawa Indians v. Beck*, No. C-185-0713 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Dec. 29, 2014).
4. Waganakising Odawak Statute 2010-004, February 21, 2010, §§ V(A)(3)(7), V(B).

§ 1.02 Criminal Contempt of Court

The Court may find an individual it has jurisdiction over in criminal Contempt of Court where

the individual intentionally and unjustifiably disrupts, obstructs, or otherwise interferes with the conduct of any proceeding of the Court, including disobedience or resistance to, or interference with, any lawful summons, subpoena, process, order, rule, term of probation, sentence, decree, or command of the Court, including failure to appear for a court date.

Comment:

1. The LTBB's law of criminal contempt provides its courts with tools to regulate individual conduct before the Court as well as compliance with Court orders generally. Consistent with the law of civil contempt, LTBB courts may initiate contempt proceedings against any Indian under their jurisdiction. Unlike the law of civil contempt, however, Tribal courts may not initiate criminal proceedings against non-Indians unless explicitly authorized by Congress to do so.¹³ The lack of criminal authority is a clear limit on the Court's authority to ensure compliance with its orders, particularly by way of deterrence, by non-Indian defendants or other non-Indians appearing before the Court.

Illustrations:

1. A member of a federally-recognized tribe who is under the LTBB Court's jurisdiction has been ordered to comply with terms as established in an order of the Court. Following a finding beyond a reasonable doubt that the member intentionally and unjustifiably disregarded the Court's order, the Court may hold the member in criminal Contempt of Court.
2. Tribal law enforcement officers arrest and charge with a crime an individual whom they have reason to believe is a member of a federally-recognized tribe. Operating under the same mistaken belief, the Tribal Prosecutor prosecutes the offender under tribal law. While before the Court, the offender intentionally and unjustifiably disrupts the proceeding, and the Court initiates criminal contempt proceedings against the individual. Before sentencing the individual on criminal contempt charges, however, the Court discovers that the individual is not a member of a federally-recognized tribe. Under such circumstances, the Court is obligated to dismiss the contempt proceedings and the underlying criminal matter for want of jurisdiction over the individual.

¹³ See, eg, *Oliphant*, 435 U.S. 191.

Case and Statutory Citations:

1. *See, eg, Little Traverse Bay Bands of Odawa Indians Tribal Court v. Shalifoe*, CR-086-0812 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Aug. 2, 2012).
2. WOTC § 9.107, Criminal Contempt of Court.

B. § 2 Court Procedure

§ 2.01 Standard of Proof in Civil Cases Generally

A plaintiff prevails in a civil suit if the plaintiff shows by a preponderance of the evidence that the defendant has violated the statute or order of the Court.

Comment:

1. When the Court adopted the preponderance of the evidence standard of proof in civil cases, it maintained consistency with other jurisdictions on the issue. Prior to the adoption of the standard, LTBB law did not set a general standard of proof in civil cases; Tribal Council is free to do so, even to the extent that it means overriding the standard of proof established by the Court. The adoption of the preponderance of the evidence standard of proof in civil actions underscores the understanding that there should not be an unreasonable bar to proving violations of law or court orders for which one is not seeking punitive relief. This is in direct contrast to more demanding standards of proof, such as beyond a reasonable doubt for criminal matters, which warrants a higher standard of proof as one's individual liberty is often at issue.

Case Citations:

1. *Swiss v. Emery*, No. PPO-019-0612 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 20, 2012).

2. *Little Traverse Bay Bands of Odawa Indians Tribal Court v. Lopez*, No. TR-017-0414 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. June 16, 2014).
3. *Northern Shores Loan Fund, Inc. v. Esford and the Estate of Thomas Esford, Doing Business as Lah Lah's Preloved Clothing*, No. C-196-0414 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 1, 2014) (citing *Chelsea Inv. Grp. LLC v. Chelsea*, 792 N.W.2d 781, 789 (Mich. Ct. App. 2010); MCL 600.6013(8); and *Babcock v. Diebolt*, 2009 WL 6430839 (Mich. Cir. Ct. 2009)).

§ 2.02 Service of Process

When proper service of process is not followed, and part of the responsibility for failure to properly file falls on the Court, the case is remanded with a second opportunity for the plaintiff to properly serve.

The Court, however, shall not dismiss a suit where the service of process is improper, but the defendant received actual notice of suit.

Comment:

1. This rule balances the equities between dismissing an action where proper service of process has not been followed and allowing the suit to continue where an objecting party has received actual notice of the suit. Any rule to the contrary would raise questions of basic fairness and would seem to go against the intent behind formal notice requirements, which are in place to ensure that opposing parties are timely made aware of the other's filings with the Court so that they are able to offer a timely response and prepare for trial. If one has received actual and timely notice of disputed filings, however, and despite whether the notice has conformed strictly to the requirements of court rules, then the purpose and intent of the court rules have been met nonetheless.

Illustration:

1. LTBB Court Rules require that parties serve by first class mail on the opposing party any filings made with the Court within 14 days of a hearing. When filing a motion and brief to dismiss an action, X fails to adhere to the filing deadline and, in fact, fails to file the motion and brief with the opposing counsel at all. Due to superior investigative action by the opposing party, Y, counsel, however, Y receives actual notice and a copy of X's motion and brief within 14 days of the hearing on the motion. Because Y received actual notice of X's motion and brief within 14 days of the hearing on the motion and, thus, had

ample time to prepare to respond to the filing, the Court should overrule efforts by Y to dismiss X's motion and brief for failure to comply with court rules.

Case Citations:

1. *Carey v. Victories Casino*, No. A-004-0606 (Little Traverse Bay Bands of Odawa Indians Ct. App. Mar. 27, 2007).
2. *Carey v. Victories Casino*, No. A-005-0507 (Little Traverse Bay Bands of Odawa Indians Ct. App. May 5, 2008).

§ 2.03 Failure to Prosecute

The Court has inherent authority to dismiss an action with prejudice if there has been a failure to prosecute within a reasonable amount of time.

Comment:

1. The courts of the LTBB have inherent authority to dismiss actions with prejudice where there has been a failure to prosecute within a reasonable amount of time. This authority seems to address concerns over the ability of the courts to promote docket efficiency, as well as to ensure that respondents' due process rights are not violated. While the case law outlining the principles of the failure to prosecute doctrine have dealt with civil law, the doctrine would seem to apply equally, if not more powerfully, to criminal matters in light of the LTBB's constitutional guarantee of a speedy trial in criminal cases.¹⁴ In both civil and criminal cases, however, it is not clear how much time would have to pass with a failure to prosecute before the delay would lead to a dismissal of an action with prejudice and, indeed, such a cut-off point may be impractical due to the varied fact patterns that arise in each case.

¹⁴ LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. II, § 6.

Illustration:

1. X is a respondent to a suit brought against her by Y for fraudulent misrepresentation. After 6 years with limited activity in the case, including over 4 consecutive years of no activity in the case, Y continues with her efforts against X in the civil matter. Due to Y's prolonged and lengthy period of inactivity in the case, the Court would be justified in dismissing Y's complaint with prejudice for failure to prosecute.

Case Citation:

1. *Little Traverse Bay Bands of Odawa Indians v. Harrington*, No. A-009-1007 (Little Traverse Bay Bands of Odawa Indians Ct. App. Apr. 23, 2009).

C. § 3 Constitutional Law

§ 3.01 Individual Rights Claims

In order for a constitutional individual rights claim to proceed, a plaintiff must assert that the plaintiff's case meets the specific parameters of the constitutional right in question.

Case Citation:

1. *Carey v. Victories Casino*, No. A-004-0606 (Little Traverse Bay Bands of Odawa Indians Ct. App. Mar. 27, 2007).

§ 3.02 Due Process

The LTBB Constitution guarantees an individual's right to due process of law.

In a case alleging a denial of due process of law, the plaintiff must establish that they are within the Tribe's jurisdiction, that the plaintiff is a person, that the plaintiff has been deprived of either a liberty or property interest, and that the plaintiff has been denied due process of law in connection with that deprivation.

Case and Statutory Citations:

1. *Carey v. Victories Casino*, No. A-004-0606 (Little Traverse Bay Bands of Odawa Indians Ct. App. Mar. 27, 2007).
2. *LaCroix & Bellfy v. Snyder et al.*, No. A-024-1014 (Little Traverse Bay Bands of Odawa Indians Ct. App. Dec. 12, 2014).
3. LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. 2, § 8.

§ 3.03 Constitutional Avoidance

LTBB courts are not required to reach a decision on any constitutional issue raised in a case if the issue raised in the case can be resolved in full by the application of an inferior Tribal statute.

Comment:

1. This doctrine recognizes the importance and broad implications of LTBB courts interpreting the Tribe's Constitution and the more limited impact of interpreting an inferior statute. If courts are able to rule on an issue as a matter of Tribal statute, then the ruling applies only to cases arising under that statute, which Tribal Council is free to modify or replace as part of the general legislative process. On the other hand, if courts rule on an issue under the Tribe's Constitution, the ruling has more permanency and can only be modified by a future decision of the courts or by a constitutional amendment, which presents higher, more distant burdens. The doctrine thus seems to show deference to limited rulings and granting the people and their representatives a simpler way to shape the law.

Illustration:

1. X brings suit against the Tribal Chairman, alleging violation of statutory and constitutional provisions. Specifically, X's petition alleges that the Tribal Chairman has allocated non-dispersed funds to a special arts project, in violation of both legislation prohibiting such an action and in violation of the constitutional provision preventing the

Tribal Chairperson from allocating non-dispersed funds without the approval of a super majority of the Tribal Council. Assuming that X has standing to sustain the lawsuit, the Court, if a reading of the legislation and constitutional provisions at issue convince it that the Tribal Chairperson is prohibited by both from taking the complained of action, should adjudicate the issue by ruling on the statutory provision alone. Under the constitutional avoidance doctrine, the Court, under the circumstances, must refrain from addressing the constitutional claim.

Case Citations:

1. *See In the Matter of J.C.W.*, No. A-014-0410 (Little Traverse Bay Bands of Odawa Indians Ct. App. Feb. 9, 2011).
2. *In the Matter of J.C.W. and J.C.W.*, No. A-015-0910 (Little Traverse Bay Bands of Odawa Indians Ct. App. Mar. 30, 2011).

§ 3.04 Conflict of Law

If there is a conflict between a provision in the LTBB Constitution and an inferior Tribal statute, the constitutional provision prevails.

Comment:

1. This principle recognizes the supremacy of the LTBB Constitution over inferior laws passed by Tribal Council. Through such a legal framework, the Tribal citizenry remain better protected against excesses of Tribal government that threaten to violate rights enumerated and retained by the citizenry. It is important to note, however, that Tribal sovereignty is limited by the United States Congress' plenary authority over tribal governments, which grants Congress significant authority over these governments that cannot be limited by tribal constitutions.¹⁵

¹⁵ *Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991).

Illustration:

1. X brings suit against the LTBB Department of Human Services (“DHS”) over enforcement of a statute that threatens X with termination of her parental rights over her child; X claims that the provisions of the statute violate her constitutional due process rights. The evidence at hand supports the Tribe’s position that X’s parental rights over her child should be terminated under the statute, but not under the LTBB Constitution. Accordingly, the court, under the conflict of law doctrine, should invalidate the statutory provision as it contradicts the LTBB Constitution. The inferior statutory provisions must give way to the supreme law of the Tribe.

Case and Statutory Citations:

1. *Harrington v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. A-019-1011 (Little Traverse Bay Bands of Odawa Indians Ct. App. Feb. 16, 2012).
2. *Little Traverse Bay Bands of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. C-120-0411 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Nov. 22, 2012).
3. *Little Traverse Bay Band of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).
4. LITTLE TRAVERSE BAY BANDS OF ODAWA CONST. art. VI, § E.

D. § 4 Election Law

§ 4.01 Tribal Election Board

§ 4.01[A] Authority of Tribal Election Board

In exercising its power to conduct elections, the Tribal Election Board may direct and take part in the operation and management of elections, and develop rules and regulations for elections.

In exercising its authority to enact rules and regulations governing elections, the Election Board is limited to promulgating rules that fill in the gaps of relevant election law statutes and

constitutional provisions.

The Election Board’s “rules and regulations” power is best understood as the authority to promulgate rules that fill in the gaps of relevant Tribal election law statutes and constitutional provisions.

Comment:

1. This interpretation clarifies the powers of the Election Board, an independent Tribal entity under the LTBB Constitution, and of Tribal Council in regulating elections. The Election Board is tasked with conducting elections and adopting “rules and regulations governing elections,” while Tribal Council, despite not having a specific enumerated power to conduct elections, is tasked with making laws not “inconsistent” with the constitution. Given that Tribal Council also has legislative authority over the affairs of the LTBB, and the Election Board is explicitly not granted any legislative authority, it reasonably follows that the Election Board’s “rules and regulations” power does not undercut Tribal Council’s legislative authority on Tribal election matters. This rule is consistent with the general constitutional language that prevents LTBB government branches from exercising powers granted to other government branches.

Illustrations:

1. Tribal Council has passed legislation that sets a date for the upcoming primary election. As part of the legislation, and in consideration of inclement weather, Tribal Council mandates that the election be “rescheduled within a reasonable amount of time if polling stations are closed due to inclement weather.” Exercising its authority under the legislation, the Election Board promulgates rules and regulations defining “reasonable time” to mean “no more than one week after an inclement weather event has passed.” A devastating snow storm is forecast to arrive on the night before the primary election, which prompts the Election Board to postpone the election by 4 days. In a legal challenge by a candidate against the Election Board’s authority to promulgate such rules and regulations, the Court dismisses the complaint and holds that the Election Board’s actions are permitted as gap fillers that clarified the legislation passed by Tribal Council.
2. Tribal election law clearly states that ballots may not be counted until 3 days following an election to provide time for absentee ballots to arrive to the Election Board’s office. Despite this statutory language, the Election Board promulgates and implements a rule allowing it to count ballots one day after an election has concluded. In an action against the Election Board, the Court should invalidate the Board’s rule as being inconsistent

with the its constitutional authority of enacting rules that fill in gaps and clarify existing legislation. Because Tribal Council’s ballot counting measures are clearly and unambiguously outlined in the election law, there are no gaps for the Election Board to fill in on this issue.

Case and Statute Citations:

1. *Gasco v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. A-017-0711 (Little Traverse Bay Bands of Odawa Indians Ct. App. Sep. 12, 2011).
2. *See* Waganakising Odawak Statute 2010-019, §§ XII(C) and (D), Tribal Elections and Election Board.

§ 4.01[B] Tribal Court Deference to Decisions of the Election Board

When the Election Board acts in a spontaneous ad hoc fashion that does not comport with the scope of its authority, Tribal courts shall decline to defer to the Board’s judgment.

Comment:

1. See Comment 1 to Section 16.04.

Case Citation:

1. *Gasco v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. A-017-0711 (Little Traverse Bay Bands of Odawa Indians Ct. App. Sep. 12, 2011).

§ 4.01[C] Tribal Council Oversight of Elections

The Tribal Council has the authority to enact laws that govern elections that are not inconsistent with the LTBB Constitution’s specific election requirements.

Comment:

1. See Comment 1 to Section 4.01[A].

Case Citation:

1. *Gasco v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. A-017-0711 (Little Traverse Bay Bands of Odawa Indians Ct. App. Sep. 12, 2011).

§ 4.01[D] Citizen Claims Against the Election Board

To establish a claim against the Election Board or election process, a Tribal Citizen with standing must show that any part of the election process was inconsistent with the Tribal Constitution, Regulations, or Tribal Code.

Case Citation:

1. *Chingwa v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. C-158-0713 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 22, 2013).

§ 4.02 Definition of “Calendar Year”

When the LTBB Constitution states that an event can happen only once in a calendar year, the event cannot reoccur for another 365 days from the date of the event itself.

Comment:

1. In defining the meaning of “calendar year” in the Tribe’s constitution, the LTBB Appellate Court was faced with a choice of adopting the Gregorian understanding of what constitutes a calendar year, which runs from January 1 to December 31, versus what

constitutes a calendar year in traditional Odawa culture, in which time is continuous. Although the LTBB Constitution adopts some western values, it directs the different branches of government to promote the preservation and realization of “Anishinaabemowin and Anishinaabe culture,”¹⁶ indicating that the Tribe’s traditional values still have a special place in matters of constitutional interpretation. What is unclear, however, and an open matter of debate where not otherwise clarified, is the extent and circumstances under which western values should replace Odawa traditions in matters of constitutional interpretation. Note, this issue is possibly clearer for interpretations of inferior LTBB statutes as the courts can look to recently compiled legislative records to ascertain the intent of Tribal Council on the matter.

Case Citation:

1. *Harrington v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. A-019-1011 (Little Traverse Bay Bands of Odawa Indians Ct. App. Feb. 16, 2012).

§4.03 Interpretation of Deadlines

When the LTBB Constitution, Waganakising Odawa Statutes, LTBBRCP, or other rules, statutes, or regulations state a deadline to file an item with the LTBB Tribal Court is within a certain number of days, the term “days” means calendar days. However, should the final day to file fall on a Saturday, Sunday, holiday, or any other day the Tribal Court Offices are closed, the final day is not counted, and the deadline is extended to the close of business on the next day that the Tribal Court offices are open. For all other instances however, the word “days” without any other descriptors means calendar days.

Comment:

¹⁶ LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. I(B).

1. When the final day of a deadline to file set by Article XII(F) of the LTBB Constitution fell on a day that the Tribal Court Offices were not open, the LTBB Appellate Court ruled that the final day should not be counted within the limitations period, and the deadline extended. Because the court was not accessible due to closure, the deadline to file was extended to the next time the Court was accessible. Even though other means are provided for the submission of materials without a physical presence being necessary, because the Court was not physically accessible the deadline was extended to the next time that it was. The Court also took into account that the intention of the statute was to protect the interests of voters to challenge elections, and this extension allowed this to happen, without also violating the other intention of giving finality to proceedings.

2. The above rule also applies outside of appealing election results. The LTBB Appellate Court also applied the rule when parties file for an appeal to the Tribal Appellate Court. In a case involving §7.401 of the LTBB Appellate Procedures, when an appeal was turned in 35 days after the original decision of the Tribal Court, outside of the 28 day deadline to file under the rule, the LTBB Appellate Court cited the Kiogima case and applied it's holding outside of an election contest, applying it to all filings of appeals. Even with the extended deadline however, the filing in question was still deemed untimely, as the Tribal Court had been open on the 28th day, as well as several days afterwards.

Illustration:

1. The election is scheduled and held on June 23rd, 2015. A losing candidate wishes to challenge the result that was posted on that same day. They attempt to file their claim on July 3rd, the tenth day from the end of the election. However, the Tribal Offices are closed for the 4th of July holiday. Because the 10th day was a Saturday, Sunday, or holiday, the filing deadline is extended to the first day the offices are open again, in this case, Monday July 6th.

Case Citations:

1. Kiogima v. LTBB Election Brd., No. A-025-1214 (C-205-1214).
2. LaCroix v. Snyder, No. A-026-0415 (C-200-0914).

E. § 5 Employment Law

§ 5.01 Reliance on Statements Made by LTBB Officials

§ 5.01[A] General Reliance

In general, reasonable reliance on inaccurate statements made by Tribal officials does not excuse the failure to adhere to the actual requirements of the law.

§ 5.01[B] Detrimental Reliance

If an individual detrimentally relies upon the incorrect statements of a government officer, the Court must look at the complete context to ascertain whether the reliance was reasonable. If reasonable, the Court must determine the appropriate remedy, which may or may not include giving effect to the statement made by the government officer.

Comment:

1. While such a rule may lead to harsh results where an individual reasonably relies on an interpretation of the law as supplied by an LTBB official, it is nonetheless necessary to preserve the Tribe's constitutional structure and the rule of law. Otherwise, LTBB officials would, in effect, be able to change the meaning of the law unilaterally and outside of the scope of their authorities. While it is clear that, as a general rule, an individual's ignorance of the law does not excuse the individual's failure to comply with the terms of the law, the rule takes into account reasonable reliance on an LTBB official's statements to an individual's detriment as a basis for giving effect to the statement made by the official. Even under the latter scenario, however, it is not clear what remedy courts will provide for.

Case Citation:

1. *Harrington v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. A-019-1011 (Little Traverse Bay Bands of Odawa Indians Ct. App. Feb. 16, 2012).

F. § 6 Foreign Law in Tribal Court

§ 6.01 Effect of Foreign Law on Tribal Court Decisions

Although not binding on the Court, the law and opinions of other jurisdictions can serve as persuasive authority for the Court.

Comment:

1. This rule recognizes that LTBB courts, as they currently exist following the Tribe's government-to-government relationship with the Federal government being reaffirmed in

1994, are still developing the common law of the Tribe. During this period, neither the Judicial branch, through the adoption of common law and interpretation of statutory law, nor the Executive and Legislative branches, through adoption of statutory provisions, have accounted for every matter and factual pattern that may come before the courts. By looking to other jurisdictions that have already developed and interpreted laws on issues that the Tribe has not, LTBB courts are able to incorporate legal principles that are not inconsistent with the LTBB Constitution or values without reinventing the wheel. By not being required by the Federal government as a general matter to adopt particular foreign legal principles, the Tribe, through the courts, maintains its sovereignty.

Illustration:

1. X files a suit against Y for breach of contract. Although Y has admitted its liability for breach of contract, the parties disagree over which interest rate should apply for damages or over whether one should apply at all; the contract, which is the result of a court settlement, is silent on an interest rate. Tribal statutory and common law is silent on the issue. After deciding that interest for damages is a common expectation for breach of contract cases, and acknowledging that Tribal law is silent on the issue, the Court looks to foreign law—in this case, Michigan law—to determine whether foreign law contains guidance on the matter that is not inconsistent with Tribal law and values. Although the Court is not required to adopt foreign law, the Court, being persuaded that the foreign law is fair and not inconsistent with Tribal law and values, chooses to adopt the foreign law as Tribal common law.

Case Citations:

1. *Blanz v. Odawa Casino Resort*, No. C-136-1011 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Aug. 2, 2012).
2. *Northern Anesthesia Providers, Inc. v. Welles*, No. FC-233-0812 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 23, 2013).
3. *Target Nat'l Bank v. Kiogama*, No. FC-246-1213 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Dec. 30, 2013).
4. *Northern Shores Loan Fund, Inc. v. Esford and the Estate of Thomas Esford, Doing Business as Lah Lah's Preloved Clothing*, No. C-196-0414 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 1, 2014) (citing *Chelsea Inv. Grp. LLC v. Chelsea*, 792 N.W.2d 781, 789 (Mich. Ct. App. 2010); MCL 600.6013(8); and *Babcock v. Diebolt*, 2009 WL 6430839 (Mich. Cir. Ct. 2009).

G. §7 Housing Law

§ 7.01 Evictions

§ 7.01[A][1] Proof of Service, Notice of Evictions

Proof of service of a notice of an eviction may be made by affidavit or any adult person stating that he or she has complied fully with the requirements of either of the methods of service.

§ 7.01[A][2] Failure to Properly Notice

Where a defendant is not properly noticed, the defendant cannot be found guilty of unlawful detainer and cannot be evicted.

Comment:

1. These rules address potential concerns that an eviction from Tribal property without proper notice would violate the evicted individual's due process rights. Notice and an opportunity for a hearing by an aggrieved party are crucial to the fairness and justice aspects inherent in one's due process rights. Given that the Tribe's constitution prohibits the Tribal government from depriving one of liberty or property without due process of law, which is similar to protections afforded to citizens in the United States' federal system, it is not a surprise that Tribal Council has adopted such notice requirements in

legislation. Even to the extent that Tribal Council did not incorporate notice requirements into legislation that authorizes the Tribe to deprive individuals of liberty or property without due process of law, Tribal courts are well-quipped and situated under the LTBB Constitution to mandate notice requirements. Due to recent Tribal Appellate Court rulings, such legal actions against the LTBB officials to ensure that constitutional rights are not being abridged would not automatically be barred by the Tribe's sovereign immunity. It is unclear, however, what the minimum notice requirements under the Constitution's due process requirements are.

Illustration:

1. X is a resident of Odawa Housing, which is owned and operated by the Tribe. X has fallen one month behind in her rent. Under legislation passed by Tribal Council and signed into law by the Tribal executive that establishes housing rules, the Tribe's Housing Department is authorized to evict residents for a failure to timely pay rent, among other reasons. The legislation, however, requires the Tribe's Housing Department to give timely notice within 14 days before an eviction hearing is held through the Tribal court system. Despite the requirements as outlined in the statute, however, the Housing Department notices X of its intent to seek her eviction at a hearing scheduled 10 days from the notice; this was the first time that X received notice of the hearing. As a result of the untimely notice, X files a motion to dismiss the action against her for failure to properly notice. Based on the statutory definition, alone, the Court must grant X's motion and the Tribal Housing Department must properly serve X before moving forward.

Case Citation:

1. *Little Traverse Bay Bands of Odawa Indians Housing Dep't v. King*, No. C-128-0811 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Dec. 12, 2011).

H. § 8 Practice Before Tribal Courts

§ 8.01 Duty Owed to the Court

In addition to agreeing to abide by the laws and customs of the Tribe, attorneys and others licensed to practice before the courts of the Tribe owe a duty of candor to the courts.

§ 8.02 Breach of Duty to the Court

Where attorneys or others licensed to practice before the courts of the Tribe breach their duty of candor, the courts may, in the interest of justice, take appropriate action to remedy the breach.

Comment:

1. These rules touch on the duties that individuals who are licensed to practice before LTBB courts owe to the judicial system and process. These responsibilities and duties, if breached, raise different questions for LTBB courts exercising their inherent disciplinary authority. On the one hand, if an individual licensed to practice before LTBB courts is a member of a federally-recognized Indian tribe, LTBB courts may exercise criminal and civil jurisdiction over that individual should that individual breach his duty owed to the courts. If, on the other hand, the attorney or another licensed to practice before Tribal courts is not a member of a federally-recognized tribe (and is not eligible for membership in a federally-recognized Indian tribe), LTBB courts may only initiate civil proceedings against those individuals if they have entered into “consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements” or if they have engaged in conduct that “threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.”¹⁷ Criminal jurisdiction over non-Indians is disallowed unless such authority is explicitly granted by Congress.¹⁸ With there being such a discrepancy in terms of corrective authority that

¹⁷ See citation to Section 1.01[A], Comment 1.

¹⁸ See, *eg*, *Oliphant*, 435 U.S. 191.

Tribal courts may take against individuals based on their tribal affiliation, the courts' authority is severely weakened depending on an individual's tribal affiliation. Nonetheless, the duties owed by individuals licensed to practice in Tribal courts remain the same regarding of their tribal affiliation.

Apart from disciplinary procedures as a means of maintaining order and the integrity of the judicial process, Tribal courts may amend judgments where an incorrect decision was reached as a result of a party's, or a party's representative licensed to practice before the courts, dishonesty before the courts. Tribal courts may take such corrective measures on their own accord, particularly where the aggrieved party is not represented by counsel, in the name of ensuring that justice is served. Such authority is consistent with traditional Tribal understanding of fairness and justice.

Illustration:

1. X is an attorney licensed to practice before Tribal courts. X is not a member of a federally-recognized tribe. As part of X's application for admission to the Tribal Bar, X agreed to adhere to the laws of the Tribe and to show respect to the Tribal courts, which includes a duty of candor. While representing his client, Z, in a suit against Y, who was not represented by counsel, X lied to the court in an effort to achieve a favorable result for Z. In the normal course of business, and after entering a verdict in favor of Z, influenced in large part by X's dishonesty, the Court discovers that X has been untruthful on the central point. After convening a rehearing on its own accord, X's dishonesty is proved on the record. As a result of X's established dishonesty, which led the court to issue an incorrect ruling, the Court amends its original order and enters judgment in favor of Y. Additionally, the Court initiates contempt proceedings against X for violating his duty of candor owed to the Court. Because X is not a member of a federally-recognized Indian tribe, however, the Court may only initiate civil contempt proceedings against X.

Case Citations:

1. *Northern Anesthesia Providers, Inc. v. Welles*, No. FC-233-0812 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 23, 2013).
2. *People of the Little Traverse Bay Bands of Odawa Indians v. Beck*, No. C-185-0713 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Dec. 29, 2014).

I. § 9 Settlements

§ 9.01 Authority to Enter into Settlement Agreements

Unless otherwise prohibited by law, parties to a dispute are free to negotiate and agree to terms that will dissolve the dispute. At the request of the parties, the Court may bind the parties to such terms in the form of a settlement order, which may or may not be confidential.

Comment:

1. This rule recognizes that members of the public are generally free to enter into contracts with each other and that civil court actions are generally voluntary and continue only to the extent that there is a will by parties to pursue a claim. The rule also has a practical impact on the parties' and Court resources. Specifically, should parties to a case decide to settle a dispute and seek a settlement order disposing of the case, Court resources are freed up and the parties have an opportunity to save time and money on litigation.

Illustration:

1. X and Y have been engaged in an ongoing legal dispute involving breach of contract claims. Through the original petition and subsequent counterclaim, both X and Y seek hundreds of thousands of dollars in damages from the other. Before the Court has had the opportunity to reach a decision in the case on the merits, X and Y, through their attorneys, agree to settle out of court for an undisclosed amount of money. X and Y subsequently bring their agreement to the Court for approval and request a settlement order disposing of the case, which the Court grants.

Case Citations:

1. *See, eg, Northern Shores Loan Fund, Inc. v. Esford*, No. C-149-0912 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Oct. 10. 2012).
2. *Northern Shores Loan Fund, Inc. v. Esford and the Estate of Thomas Esford, Doing Business as Lah Lah's Preloved Clothing*, No. C-196-0414 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 1, 2014).

§ 9.02 Effect of Settlement Agreements on Prior Contractual Obligations

Unless otherwise prohibited by law or ordered by the Court, a binding settlement agreement shall replace the terms and conditions of a previous contract at issue in a dispute between parties to a suit.

Comment:

1. This rule acknowledges that settlement agreements made to resolve litigation generally serve as contracts that supersede and replace prior contractual obligations of parties to a

dispute. Assuming that all of the parties to a settlement have willingly accepted the terms of the settlement agreement, consideration for which was presumably, at a minimum, an agreement to withdraw legal complaints, the requirements of contract have been met. Such a conclusion, however, would be inappropriate where the settlement agreement stipulated that a failure to adhere to the terms of the agreement would resurrect the former contract(s) that was at issue in the initial litigation. Barring such terms or other legal authorization, though, the initial contract is void and suits for violating the settlement agreement must proceed under the settlement agreement.

Illustration:

1. X sued Y for breach of contract under a loan agreement where X loaned Y \$12,000 and Y agreed to repay X with regular monthly payments over 10 years at 12% interest per annum. The contract also stated that, under any failure to make a timely payment as agreed to in the contract, Y defaulted on the contract and X was authorized to take immediate action in Tribal courts to collect on the outstanding balance with interest. Sometime after making regular payments under the contract, Y abruptly stopped making payments, thus placing Y in default, and X initiated court proceedings to collect on the outstanding debt plus interest. Under undisputed calculations, Y's outstanding debt plus interest owed to X was in excess of \$7,000. After weighing the likelihood of ever collecting on the substantial outstanding debt against the cost for paying for attorneys to seek collection, X and Y entered into a binding, Court-approved settlement agreement whereby Y agreed to pay X \$4,500 from X's retirement fund within one week to forever resolve the dispute.

Unfortunately for X, Y failed to follow through with his obligations under the settlement agreement. As a result, X filed suit seeking repayment of \$7,000+ under the initial contract. Reasoning that the settlement agreement replaced the initial contract, the Court entered judgment in favor of X, but under the terms of the settlement agreement, for an amount of \$4,500 with interest to accrue until the debt is satisfied.

Case Citation:

1. *Northern Shores Loan Fund, Inc. v. Esford and the Estate of Thomas Esford, Doing Business as Lah Lah's Preloved Clothing*, No. C-196-0414 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 1, 2014).

§ 9.03 Calculating Interest for Damages Awarded in Settlement Order

Where the settlement order is silent as to applicable interest rate for awarding damages to the injured party, the Court shall award interest under Michigan law for calculating interest rates for money judgments. Under this practice, interest on a money judgment recovered in a civil action is calculated at 6-month intervals from the date of the filing of the complaint at a rate of interest equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1. Interest awarded under this formula shall continue to accrue from the date that the judgment is signed until the judgment is rendered in full.

Comment:

1. As a developing tribal government, the LTBB is still in the process of establishing areas of common and statutory law that cover certain incidents having an impact on the lives of Tribal Citizens. When creating or expanding upon the law, however, Tribal authorities must take care to ensure that any additional legislation or principles are consistent with the LTBB Constitution and tribal customs. Given that the LTBB did not initially establish rules for calculating interest for damages awarded in money judgments where the judgment is silent as to an interest rate, the Tribe looked to foreign law, specifically that of Michigan, in adopting such a principle. Note, given the familiarity with Michigan law among the peoples practicing in Tribal courts and the unique relationship the Tribe maintains with the State, Tribal courts have often looked to Michigan law for guidance

on issues that Tribal law is silent on. Although the historic rate for calculating interest on money judgments in Michigan has not been unjustly high by most standards, it remains an open question whether future exorbitant rates would be unconscionable or violate some other principle of Tribal law or custom. Under such a scenario, the Court would have to determine whether to modify or maintain the current rate.

Illustration:

1. X obtained a money judgment via settlement order against Y in the amount of \$5,000; the complaint was filed on December 1, 2013, and the order was entered into on December 15, 2013. While the agreement was silent as to an interest rate, the order required Y to make immediate payment to X, thereby making the inclusion of an interest rate unnecessary at the time. Contrary to the terms of the order, however, Y failed to pay X until March 1, 2014. On July 1, 2013, the average interest rate paid at auctions of 5-year United States treasury notes was 1%, with the rate increasing to 2% on January 1, 2014.

Using the formula that has been adopted as part of the Tribe's common law, the interest rate for the money judgment would be consistently 2% (1% + 1%), as only 3 months passed from the time that the complaint was filed until the day that the judgment was satisfied. Given that the formula calls for calculating interest at 6 month intervals from the date that the complaint was filed using July 1 and January 1 interest rates, the interest rate calculation would not be 3% (2% + 1%) unless and until payment on the judgment was delayed more than 6 months after the complaint was filed, which would be June 1, 2014 at the January 1, 2014 interest rate calculation; even here, the increased interest rate would only apply to the balance outstanding as of June 1. Assuming that there was further delay in satisfying the judgment, the rate would not change again until 6 months after June 1, 2014.

Case Citation:

1. *Northern Shores Loan Fund, Inc. v. Esford and the Estate of Thomas Esford, Doing Business as Lah Lah's Preloved Clothing*, No. C-196-0414 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 1, 2014) (citing *Chelsea Inv. Grp. LLC v. Chelsea*, 792 N.W.2d 781, 789 (Mich. Ct. App. 2010); MCL 600.6013(8); and *Babcock v. Diebolt*, 2009 WL 6430839 (Mich. Cir. Ct. 2009).

J. § 10 Sovereign Immunity

§ 10.01 Tribal Sovereign Immunity Generally

Sovereign immunity is a threshold issue that must be determined before any Tribal court can review the merits of the parties' arguments.

Unless expressly waived by the Tribal Council, or abrogated by the Congress of the United States, sovereign immunity is an absolute bar to lawsuits against the Tribe. However, Tribal members have a right to due process through administrative hearings.

Employees and officials of the Tribe acting within the scope of their duties or authority shall be immune from suit, except as otherwise waived by Tribal law.

Comment:

1. Sovereign immunity is a legal doctrine that establishes that a sovereign entity, in this case the LTBB, can do no wrong and is immune from suit. The doctrine, as adopted by the

LTBB, is a Western legal concept. Under United States case law, the Supreme Court has held numerous times that tribal sovereign immunity exists as an inherent part of tribal sovereignty that was not divested by treaties between tribes and the United States.¹⁹ This legal framework has enabled tribal governments, including the LTBB, with a powerful tool with which to engage in the intricacies of governance without interference from unauthorized parties, thereby maintaining some semblance of traditional tribal sovereignty. Tribal sovereign immunity, and indeed ultimate tribal sovereignty, however, is severely limited in that Congress, in addition to tribal governments themselves, may unilaterally abrogate it, thereby exposing tribal governments to suit. Moreover, in a further sign of the erosion of traditional tribal sovereignty, tribal sovereign immunity is never a bar to legal actions taken in which the United States is a party nor does it prevent lawsuits against tribal officials in their official capacities.²⁰ Functionally, however, tribal sovereign immunity has an extensive reach, preventing lawsuits against tribes, unless such immunity is otherwise waived by the tribe itself or abrogated by Congress, in both tribal courts as well as Federal and state courts.²¹

¹⁹ See, eg, *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. ____ (2014).

²⁰ *Id.*

²¹ *Id.*

Illustrations:

1. X, an employee of the LTBB, brings suit against the LTBB, alleging negligent upkeep of gaming appliances that have resulted in X being severely injured. X seeks unspecified monetary damages. Neither the LTBB nor Congress has waived tribal sovereign immunity in such an instance. Accordingly, as a threshold matter, the Court must dismiss the case for lack of subject matter jurisdiction.
2. X, an employee of the LTBB, brings suit against the LTBB, alleging negligent upkeep of Tribal gaming appliances that have resulted in X being severely injured. X seeks unspecified monetary damages. While the LTBB has not waived sovereign immunity in this instance, Congress, in an express abrogation of tribal sovereign immunity, has enacted legislation allowing plaintiffs to maintain actions against tribal governments under similar circumstances and to seek up to \$50,000.00 in damages. Under the circumstances, the LTBB may not use the defense of sovereign immunity to have the lawsuit dismissed.

Case and Statutory Citations:

1. *Carey v. Victories Casino*, No. A-004-0606 (Little Traverse Bay Bands of Odawa Indians Ct. App. Mar. 27, 2007).
2. *Little Traverse Bay Bands of Odawa Indians v. Harrington*, No. A-008-1007 (Little Traverse Bay Bands of Odawa Indians Ct. App. May 18, 2009).
3. *Carey v. Victories Casino*, No. C-062-1005 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. April 20, 2006).
4. *Little Traverse Bay Band of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).
5. LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. XVIII, §§ A, B.

§ 10.02 Actions Within Employees' and Officials' Scope of Duty

When deciding whether an employee's or official's conduct is within the scope of their duties or authority, the Appellate Court looks to whether or not the type of action is within the employee's or officials' scope of duties or authority, not the alleged circumstances of a particular action.

Actions taken by Tribal employees and officials under the authority of an unconstitutional law or without constitutional authority are outside of the employees' and officials' scope of duties or authority, and subject the employees and officials to suit.

For purposes of determining whether sovereign immunity is a jurisdictional bar to claims against Tribal employees and officials, the Tribal Court must make a threshold determination concerning whether the allegations of the complaint demonstrate that it is sufficiently likely that the complained of actions were made under color of authority of an unconstitutional law or without constitutional authority.

Comment:

1. This rule establishes a formal and orderly process for overcoming the jurisdiction bar imposed by sovereign immunity as it is applied to LTBB officials and employees acting outside of the scope of their duties and authority. Prior to the establishment of this principle, there was not a clear and concise test for Tribal courts to initially determine whether certain alleged actions were outside of LTBB officials and employees scope of duty and authority. Such a reality also meant that some parties appearing before Tribal courts lacked clarity on what to argue and present to the courts as a means of overcoming the jurisdictional bar inherent in the LTBB's sovereign immunity. This was particularly true for parties who were not represented by legal counsel and who, subsequently, had little guidance on the subject. Even with this principle, however, it is still unclear to what extent, outside of the formal legal process, that LTBB officials have inherent supervisory authority to direct certain employees under them in a manner that creates official duties and authority within the employees.

Illustration:

1. Tribal Council is empowered by the LTBB Constitution to allocate funds towards worthy projects, but is explicitly charged with doing so within the formal legislative process that

allows the Tribal Chairperson an opportunity to approve or veto the proposed allocation. Contrary to this constitutional mandate, however, Tribal Council has on occasion bypassed the formal legislative process and has allocated funds by simple motion, thus depriving the Tribal Chairperson of his constitutional role in the legislative process. As a result of Tribal Council's actions, the Tribal Chairperson files suit against Tribal Council alleging that the body unconstitutionally allocated funds outside of the formal legislative process. When considering the petition before it, an LTBB court would have adequate information with which to make a threshold determination of whether it is sufficiently likely that the complained of actions were made without constitutional authority. If the Court finds in the affirmative on this issue, then sovereign immunity does not serve as a jurisdictional bar to claims against LTBB employees and officials.

Case Citations:

1. *Carey v. Espinosa & Eckholm*, No. A-011-1008 (Little Traverse Bay Bands of Odawa Indians Ct. App. May 2, 2011).
2. *See Little Traverse Bay Bands of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. C-120-0411 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Nov. 22, 2012).
3. *Little Traverse Bay Band of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).

§ 10.03 Scope of Relief

Unless otherwise explicitly authorized by Tribal Council or otherwise applicable law, suits against the Tribe or employees and officials acting outside of the scope of their duties and authority shall be limited to injunctive, not monetary, relief.

Comment:

1. This rule recognizes that, as a matter of LTBB constitutional law, waivers of sovereign immunity against the Tribe or employees and officials acting outside of the scope of their duties and authority are designed to protect individual rights and to protect against

constitutional abuses. Monetary damages are not necessary to protect individual rights as well as protect individuals against abuses; indeed, monetary relief would go beyond what is necessary to protect individual rights and, instead, serves to compensate injured parties. Therefore, only Tribal Council, or the Congress of the United States, may waive the LTBB's sovereign immunity to provide for monetary damages.

Illustration:

1. X was terminated by the LTBB Law Enforcement Department and claims that the statute authorizing his termination was unconstitutionally enacted. Apart from seeking a permanent injunction against the Tribal Chairperson from enforcing the statute in

question, X seeks damages for pain and suffering and wrongful termination under un-adopted common law principles; neither Tribal Council nor Congress have explicitly waived the LTBB's sovereign immunity for monetary damages for suits of this nature. The LTBB Court makes a threshold determination that sovereign immunity does not serve as a jurisdictional bar for the suit against the Tribal Chairperson, who is an LTBB official. On the other hand, however, the LTBB Court is required to dismiss the portion of the complaint seeking monetary damages on sovereign immunity grounds.

Case Citations:

1. *See Little Traverse Bay Bands of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. C-120-0411 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Nov. 22, 2012).
2. *Little Traverse Bay Bands of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).

§ 10.04 Limited Waiver for Workplace Grievances

The LTBB government employee handbook provides only a limited waiver of sovereign immunity for lawsuits involving workplace grievances for those who strictly comply with all of

the provisions of the grievance process.

Case and Handbook Citations:

1. *Little Traverse Bay Bands of Odawa Indians v. Harrington*, No. A-008-1007 (Little Traverse Bay Bands of Odawa Indians Ct. App. May 18, 2009).
2. Little Traverse Bay Bands of Odawa Indians Employee Handbook.

§ 10.05 Burden for Establishing Waiver of Sovereign Immunity

The burden for establishing a waiver of sovereign immunity is on the petitioner.

Case Citation:

1. *Harrington v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. C-086-0310 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. April 23, 2010).

K. § 11 Traditional Law

§ 11.01 Incorporating Traditional Values into Tribal Court Decisions

When deciding cases before it, the Court may take into account not only written decisions, statutes, and procedures, but traditional Odawa values as well.

Comment:

1. *See* Comment 1 to Section 4.02

Case Citations:

1. *See Carey v. Victorias Casino*, No. A-005-0507 (Little Traverse Bay Bands of Odawa Indians Ct. App. May 5, 2008).
2. *Blanz v. Odawa Casino Resort*, No. C-136-1011 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Aug. 2, 2012).

§ 11.02 The Role of Justice and Fairness in Traditional Practice

Following traditional Odawa culture and practice, maintaining justice and preserving fairness are of paramount importance to the Tribe.

Comment:

1. See Comment 1 to Section 4.02 and Comment 1 to Section 11.01.

Illustration:

1. X slips and falls while patronizing Odawa Casino Buffett. In an action against the LTBB for which sovereign immunity is not a bar, X seeks unspecified damages from the Tribe. It is uncontested that X's injuries are the result, in part, of his own negligence. Under the theory of contributory negligence as adopted by some jurisdictions, a plaintiff may not recover from a defendant where a plaintiff's injuries are due, in part, to the plaintiff's own negligence. Comparative negligence, on the other hand, merely reduces the amount of damages a plaintiff can recover in a suit based on the degree to which the plaintiff's own negligence contributed to the plaintiff's injury. As LTBB codified law is silent on the matter, attorneys for the LTBB request that the Court adopt as common law the Tribe the theory of contributory negligence, and, based on the plaintiff's negligence in this case, bar recovery. Attorneys for X seek an adoption of the comparative negligence doctrine by the Court. Upon a review by the Court LTBB traditional law of resolving

conflict, the Court determines that the doctrine of contributory negligence is inconsistent with traditional Tribal values of ensuring justice. Accordingly, the Court, in keeping with traditional LTBB values of justice, rejects the doctrine of contributory negligence and adopts the doctrine comparative negligence as Tribal common law.

Case Citations:

1. *Northern Anesthesia Providers, Inc. v. Welles*, No. FC-233-0812 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. July 23, 2013).
2. *Blanz v. Odawa Casino Resort*, No. C-136-1011 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Aug 2, 2012).

L. § 12 Traffic Law

§ 12.01 Waiver of Violation

When a respondent alleged to have violated this section supplies proof of his handicap placard, valid at the time of the citation, and proof of the respondent's presence at the scene of the citation, the Court may dismiss the case.

Case Citation:

1. *See, eg, People of the Little Traverse Bay Bands of Odawa Indians v. McShane*, No. TR-022-0614 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. June 17, 2014).

M. § 13 Tribal Council

§ 13.01 Powers of Tribal Council Generally

Tribal Council is empowered by the Constitution as the Tribe's legislative body to make laws and appropriate funds, among other responsibilities. In exercising its legislative duties, Tribal Council is prohibited from making laws that are inconsistent with the Constitution and may not exercise any powers not granted to it in the Constitution.

Comment:

1. See Comment 1 to Section 4.01[A].

Illustration:

1. See Illustration 1 to Section 10.02.

Case and Statutory Citations:

1. See, eg, *Little Traverse Bay Band of Odawa Indians Tribal Council Members: Belinda*

Bardwell et al. v. Harrington & McNamara, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).

2. LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS CONST. art. VI, § C, art. VII, §§ D(1) and E.

§ 13.02 Authority to Bind the Executive Branch

Actions of the Tribal Council are only binding on the Executive Branch if they are properly adopted through the legislative process.

Comment:

1. See Comment 1 to Section 4.01[A].
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Illustration:

1. See Illustration 1 to Section 10.02.

Case Citation:

1. *Little Traverse Bay Band of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).

N. § 14 Tort Law

§ 14.01 Premises Liability

The *open and obvious* doctrine does not serve as a complete bar to recovery in actions for damages based on the theory of premises liability. Instead, the Court will weigh the comparative negligence of the parties in deciding liability.

Comment:

1. The LTBB court system rejected the traditional open and obvious doctrine, which serves in many cases as a complete bar to recovery for plaintiffs who were harmed by objects on a defendant's property that were visible to the plaintiff. Such an approach has been rejected by other jurisdictions, some of which factor in whether the visible object was unreasonably dangerous when determining liability for damages, among other factors. The traditional doctrine's harshness in serving as a complete bar to recovery goes against traditional Odawa values of fairness as discussed in Section 11.01. Nonetheless, whether an object that has harmed a plaintiff was clearly visible is not irrelevant to assigning fault to the parties in a case. It is not clear, however, how the doctrine would apply in every situation and the doctrine likely requires a fact-intensive analysis in this regard.

Illustration:

1. X is a customer at a tribal enterprise, for which Tribal Council has waived sovereign immunity for monetary damages in negligence suits. The enterprise oversaw the negligent installation of a sidewalk on its property, where parts of the sidewalk were 6 inches higher than other parts. Lighting, however, was more than adequate on these areas of the sidewalk, and the aberration was clearly visible to all who walked on the sidewalk. One day X, despite the aberration being clearly visible, slipped and fell when attempting to adjust his footing to account for the additional 6 inches on a particular part of the sidewalk, sustaining serious injuries in the process. As a result of his injuries, X brought suit against the enterprise.

During trial, the enterprise's attorneys argued that the open and obvious doctrine should bar recovery for X, as the aberration was clearly visible to X. While taking into account the fact that the aberration in the sidewalk was clearly visible to X in assigning fault and calculating damages, however, the court rejected the enterprise's traditional approach to the open and obvious doctrine as being inconsistent with LTBB customs and values.

Case Citation:

1. *Blanz v. Odawa Casino Resort*, No. C-136-1011 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Aug. 2, 2012).

O. § 15 Tribal Membership

§ 15.01 Authority for Adopting Membership Law

The Court has no authority to adopt substantive provisions of law that relate to Tribal membership; only Tribal Council, within the limits established by the Tribal Constitution, may do so.

Comment:

1. This rule respects the constitutional role of the different branches of Tribal government. Under this system, Tribal Council is given authority to adopt substantive provisions of

law that relate to Tribal membership. It is not the role of the LTBB courts to decide the wisdom of Tribal Council's actions. LTBB courts, however, do serve as a powerful check on Tribal Council's authority in this area, with the courts being able to determine whether Tribal membership legislation runs afoul of the LTBB Constitution.

Illustrations:

1. Tribal Council passes legislation amending the LTBB's membership law, which affords membership, in part, based on one's relationship to an ancestor on the Durant Roll. Prior to the new legislation being enacted, the law recognized a rebuttable presumption that members listed on the Durant Roll were 4/4 Odawa; the LTBB Constitution mandates that members have at least 1/4 Indian ancestry and trace to the historic villages of the Odawak from the Little Traverse Bay area. Under the new legislation, however, Tribal Council targeted certain townships, based on newly discovered relationships within the townships, and lowered the presumptive blood quantum of members from these townships listed on the Durant Roll to 1/2 Odawa. The result of the change is legislation was to revoke LTBB citizenship rights to approximately one-third of the Tribe's membership. Upon a challenge by the affected members against Tribal Councilors, the LTBB courts must dismiss any claims against the Tribal Councilors as they acted within the scope of their constitutional authority and there is no judicially reviewable issue.
2. The LTBB Constitution requires that citizens of the Tribe be at least 1/4 North American Indian or Alaska Native, among other requirements. At the most recent session of Tribal

Council, legislation was passed requiring the Tribal Enrollment Department to only process membership applications of individuals who had at least 1/2 North American Indian or Alaska Native blood quantum. In an action against the Tribal Chairperson seeking to prevent him from enforcing the law, LTBB courts are empowered to strike down the legislation and prevent the Chairperson from enforcing this or any similar legislation as it is inconsistent with the LTBB Constitution; such legislation would only pass legal review if a constitutional amendment increasing the basic blood quantum requirements for membership was enacted.

Case Citation:

1. *See, eg, Startup v. Little Traverse Bay Bands of Odawa Indians*, No. C-060-0705 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Sep. 30, 2006).

P. § 16 Tribal Court

§ 16.01 Judicial Disqualification or Recusal

§ 16.01[A] Standards for Judicial Disqualification or Recusal

When a party seeks to disqualify a judge, disqualification or recusal is only appropriate in cases where the judge's impartiality might reasonably be questioned.

Case Citation:

1. *See, eg, Carey v. Espinosa & Eckholm*, No. A-011-1008 (Little Traverse Bay Bands of Odawa Indians Ct. App. May 2, 2011).

§ 16.01[B] Removal of Tribal Court Judge on Showing of Lack of Impartiality

Where serious questions of impartiality on a particular case exist for a Tribal Court judge, the Appellate Court may remove the judge in question and transfer the case to another Tribal Court judge.

Case Citation:

1. *TBA Credit Union v. Giem*, No. A-010-0708 (Little Traverse Bay Bands of Odawa Indians Ct. App. June 17, 2009).

§ 16.02 Obligation to Compile Record

The Court may not dispose of a case before it until all parties to a case have been served and provided an opportunity to answer and compile a record.

Comment:

Prior to the Appellate Court’s clarification on this issue, it was an open question of whether LTBB courts could, on their own accord, dismiss a case before them for a lack of subject matter jurisdiction. The LTBB Rules of Civil Procedure are silent on this point, only addressing that parties may seek dismissal of a case for a lack of subject matter jurisdiction, among other reasons.²² In clarifying acceptable practice under similar circumstances, however, the Appellate Court did not foreclose the possibility of LTBB courts, acting on their own accord, dismissing matters before them for a lack of subject matter jurisdiction. Yet, in what the Appellate Court referred to as a “minimum” requirement of constitutional due process, it is clear that LTBB courts must allow parties to be served and provide them with an opportunity to answer, regardless of whether a petition is, on its face, deficient for a lack of subject matter jurisdiction.

Case Citation:

1. *LaCroix & Bellfy v. Snyder et al.*, No. A-024-1014 (Little Traverse Bay Bands of Odawa Indians Ct. App. Dec. 12, 2014).

§ 16.03 Statutory Interpretation

In the absence of a statutory definition of terms provided for in codified law, the Court applies the ordinary meaning to the terms.²³

Case Citation:

1. *Little Traverse Bay Bands of Odawa Indians Gaming Regulatory Comm’n v. Roberts*, No. A-018-0811 (Little Traverse Bay Bands of Odawa Indians Ct. App. Dec. 20, 2012).
2. *See Little Traverse Bay Bands of Odawa Indians Natural Resources Dep’t v. Whittaker*, No. H-075-1112 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. April 8, 2013).

²² Little Traverse Bay Bands of Odawa Indians Rules of Civil Procedure, *available at* [http://www.ltbbodawa-nsn.gov/Tribal%20Court/civilrules%20\(addition%20of%204-21-11\).pdf](http://www.ltbbodawa-nsn.gov/Tribal%20Court/civilrules%20(addition%20of%204-21-11).pdf).

²³ This rule applies to all LTBB courts.

3. *Little Traverse Bay Bands of Odawa Indians Natural Resources Dep't v. Houghton*, No. H-085-0914 (Little Traverse Bay Bands of Odawa Indians Tribal Ct. Sep. 8, 2014).

§ 16.04 Deference to Agency Actions

The Court should give deference to agency actions, but only after concluding that an agency acted within the scope of its lawful authority.²⁴

Comment:

1. This rule recognizes that agencies, in exercising their lawful responsibilities, accumulate expertise on certain subject matters that courts do not generally have. Thus, LTBB courts will give great deference to agency decisions, particularly agency rulemaking. With such a rule, it is important that LTBB agencies have some guiding principles as they conduct their business; otherwise, in the name of giving deference, LTBB courts would invite LTBB agencies to overstep their legal authority. This principle is not, however, absolute, as an LTBB agency's authority, as well as the power of LTBB courts to review agency decisions, can be broadly or narrowly refined and defined by statute or the LTBB Constitution.

Case Citations:

1. *Little Traverse Bay Bands of Odawa Indians v. Milligan*, No. A-006-0707 (Little Traverse Bay Bands of Odawa Indians Ct. App. Oct. 1, 2008)
2. *Gasco v. Little Traverse Bay Bands of Odawa Indians Election Bd.*, No. A-017-0711 (Little Traverse Bay Bands of Odawa Indians Ct. App. Sep. 12, 2011).
3. *See Little Traverse Bay Bands of Odawa Indians Gaming Regulatory Comm'n v. Roberts*, No. A-018-0811 (Little Traverse Bay Bands of Odawa Indians Ct. App. Dec. 20, 2012).

Q. § 17 Appellate Court

²⁴ This rule applies to all LTBB courts.

§ 17.01 Appellate Court Procedure

§ 17.01[A] Reversing Factual Omissions of Trial Record

If the Tribal Court makes glaring omissions of fact that are clearly material to the matter or which have the power to determine the case's outcome, then the Appellate Court can reverse findings.

Comment:

1. This rule acknowledges, by setting a high standard, that trial courts are generally best equipped to make findings of fact that the Appellate Court generally may not disturb. Indeed, trial courts are in unique positions to guide the compilation of a trial record and to judge witness credibility, etc. Where trial courts fail in their responsibility to adequately compile a factual record that justifies their legal conclusions, however, the Appellate Court's deference to the trial courts' factual record is, in the interest of justice, lessened. Under such circumstances, the Appellate Court has generally declined to issue a ruling on the merits, and has, instead, remanded cases back to the Tribal Court to make appropriate findings of fact before issuing conclusions of law.

Case Citations:

1. *McFall v. Victories Casino*, No. A-003-1203 (Little Traverse Bay Bands of Odawa Indians Ct. App. Dec. 12, 2005).
2. *Northern Shores Loan Fund, Inc. v. Harbor Wear of Boyne, Inc.*, No. A-021-0312 (Little Traverse Bay Bands of Odawa Indians Ct. App. Nov. 6, 2012).

§ 17.02 Precedential Values of Appellate Court Decisions

§ 17.02[B][1] Precedential Value for Tribal Court and Appellate Court

The Appellate Court's determination of a legal issue is binding on both the Tribal Court, as well as binding on the Appellate Court when the Appellate Court is faced with a subsequent appeal given the same case and substantially the same facts.

Case Citation:

1. *Carey v. Espinosa & Eckholm*, No. A-005-0507 (Little Traverse Bay Bands of Odawa Indians Ct. App. May 5, 2012).

§ 17.02[B][2] Intervention in a Legal Action Before the Appellate Court

Where an individual has sufficient basis for intervening in an appeal under LTBBRCP Rule X(a), the individual also meets the requirement for standing to pursue an appeal.

Case Citation:

1. *Little Traverse Bay Band of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).

§ 17.02[B][3] Requesting Reconsideration of Appellate Court Decision

The right to request reconsideration of an Appellate Court decision is limited to parties in interest.

Comment:

1. This rule ensures that only parties with an interest in a case are allowed to request reconsideration of an Appellate Court decision. Through such a rule, the LTBB Judiciary limits access to the judicial process to actual parties, thereby ensuring that injured parties can have their issues adjudicated in a timely fashion. Indeed, if anyone, regardless of whether they were real parties in interest to a case, was allowed to seek reconsideration of a case before the Appellate Court, at a minimum docket efficiency would be diminished as the Appellate Court took time to address legal filings associated with the appeal.

Illustration:

1. After the Appellate Court issues a decision on a matter that is not favorable to Y, Y declines to request reconsideration of the decision. Believing that the Appellate Court erred on a crucial legal ground that affects the Tribal citizenry as a whole, Z, an LTBB Citizen who was not a party to the original action in the Tribal Court or before the Appellate Court, files a motion for reconsideration with the Clerk of the Appellate Court. As Z is not a real party in interest, the Appellate Court should deny Z's motion for reconsideration without addressing the merits of the motion.

Case and Rule Citations:

1. *TBA Credit Union v. Giem*, No. A-010-0708 (Little Traverse Bay Bands of Odawa Indians Ct. App. June 17, 2009).
2. *See Little Traverse Bay Band of Odawa Indians Tribal Council Members: Belinda Bardwell et al. v. Harrington & McNamara*, No. A-022-1212 (Little Traverse Bay Bands of Odawa Indians Ct. App. July 9, 2014).
3. *See generally* LTBB App. Procedures, Rule 7.504.

§ 17.03 Deference to Tribal Court Regarding Witness Credibility

The Appellate Court will defer to the Tribal Court's conclusions regarding the oral testimony of witnesses before the Court.

Comment:

1. *See* Comment 1 to Section 17.01[A].

Case Citations:

1. *McFall v. Victories Casino*, No. A-003-1203 (Little Traverse Bay Bands of Odawa Indians Ct. App. Feb. 9, 2011).
2. *See Northern Shores Loan Fund, Inc. v. Harbor Wear of Boyne, Inc.*, No. A-021-0312 (Little Traverse Bay Bands of Odawa Indians Ct. App. Nov. 6, 2012).

§ 17.04 Interpreting Tribal Statutes

When interpreting Tribal statutes, the Appellate Court must consider the statute as a whole and give every word or phrase some reasonable meaning. No clause should be rendered superfluous or void.

Case Citation:

1. *See, eg, In the Matter of J.C.W.*, No. A-014-0410 (Little Traverse Bay Bands of Odawa Indians Ct. App. Feb. 9, 2011).

§ 17.05 Appeals

The Appeals Court may only review that which has already occurred following a Tribal Court hearing.

An appeal is properly brought before the Court if the judgment, order or decision of the Tribal Court is final; the appeal involved an order denying an appellant's motion for disqualification of a justice; or the appeal involves an order affecting a substantial right or claim which disposes of the matter as to that participant.

Case Citation:

1. *McFall v. Victories Casino*, No. A-003-1203 (Little Traverse Bay Bands of Odawa Indians Ct. App. Dec. 12, 2005).

