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A Restatement of the  
Common Law of the Grand  
Traverse Band of Ottawa and  
Chippewa Indians

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# A RESTATEMENT OF THE COMMON LAW OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

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## INTRODUCTION TO THE RESTATEMENT

“When the Eagle returns we will again be a great nation”

– Jonas Shawandase, Grand Traverse Band Tribal Elder from 1930-1950s

From 1872 until 1980 the United States government continually refused to recognize the sovereign status of the Grand Traverse Band of Ottawa and Chippewa Indians (GTB).<sup>1</sup> Citizens of the Grand Traverse Band unsuccessfully attempted to regain this government-to-government relationship in 1933 and 1943, for example.<sup>2</sup> Despite these intrepid attempts, it took until May 27, 1980 for the United States to “re-recognize”

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<sup>1</sup> See *Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney for the Western District of Mich.*, 369 F.3d 960, 961-62 & n. 2 (6th Cir. 2004); Matthew L.M. Fletcher, *Politics, History, and Semantics: The Federal Recognition of Indian Tribes*, 82 N.D. L. REV. 487, 504-08 (2006).

<sup>2</sup> See GEORGE WEEKS, MEM-KA-WEH: DAWNING OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS 13-15 (1992).

the Grand Traverse Band as a sovereign nation.<sup>3</sup> The Grand Traverse Band was the first Tribe re-recognized by the Secretary of the Interior pursuant to the federal acknowledgement process, 25 C.F.R. Part 54 (now codified at 25 C.F.R. Part 83).<sup>4</sup> Every year this date is celebrated by Tribal citizens and allows for reflection upon the great nation the Tribe has become once again. However, the Grand Traverse Band was not able to restore itself overnight.

After years of conflict with the local residents and county officials in addition to battling the Bureau of Indian Affairs over membership criteria, the Grand Traverse Band Constitution was ratified on February 24, 1988 by a vote of 376 – 47.<sup>5</sup> The GTB Constitution was among the first of Michigan Tribal constitutions to mandate the creation of a separate and independent Tribal Judiciary.<sup>6</sup> GTB Constitution, Art. V § 1 states: “[t]he tribal court system shall be composed of a court of general jurisdiction (hereinafter referred to as the ‘Tribal Court’), an appellate court (hereinafter referred to as the ‘Tribal Appellate Court’), and such lower courts as the Tribal Appellate Court may establish.” A good example of an additional lower court is the “Drug Court” program designed to deal with drug offenders on the reservation. This program has been widely successful and has provided the Court with an avenue to utilize traditional dispute resolution methods such as peacemaking.<sup>7</sup> Moreover, the GTB Constitution established the first separate and independent appellate court to hear appeals. At that time the GTB Constitution was

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<sup>3</sup> See Determination for Federal Acknowledgment of Grand Traverse Band of Ottawa and Chippewa Indians as an Indian Tribe, 44 FED. REG. 19,321 (Mar. 25, 1980).

<sup>4</sup> See *Grand Traverse Band*, 369 F.3d at 962.

<sup>5</sup> See GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS CONST. art. XVII (“Certificate of Results of Election”).

<sup>6</sup> See Michael D. Petoskey, *Tribal Courts*, \_\_ MICH. B. J. 366, 368 (1988).

<sup>7</sup> See generally Nancy A. Costello, *Walking Together in a Good Way: Indian Peacemaker Courts in Michigan*, 76 U. DET. MERCY L. REV. 875 (1999).

ratified, all of the other Michigan Tribes were still permitting Tribal Councils to act as the “courts” of last resort.<sup>8</sup>

Since its inception, the GTB Tribal Court has promoted and propelled the perception that tribal courts are institutions of integrity, honor, and veracity. Decisions, orders, and judgments of the GTB Tribal Court have been recognized by other courts in Michigan consistent with the amendment made to the Michigan Court Rules with respect to judgments of tribal courts.<sup>9</sup> Delegates from the GTB Tribal Court participated in the Indian Tribal Court/State Trial Court Forum which led to the 1996 promulgation of Michigan Court Rule 2.615, “Enforcement of Tribal Judgments” requiring Michigan courts to presume as valid, “judgments, decrees, orders, warrants, subpoenas, records and other judicial acts” of the tribal courts of Michigan federally recognized tribes.<sup>10</sup>

The attention to detail, commitment to the GTB Constitution, and overall acuity is precisely why the growth of GTB common law has been developing over the past nineteen years. This timeframe has permitted a number of GTB trial court judges and appellate court justices to pursue its constitutional mandate to exercise judicial power over “all cases arising under this Constitution, ordinances, regulations, and/or judicial decisions of the Grand Traverse Band and [] exercised to the fullest extent consistent with self-determination and the sovereign powers of the Tribe.”<sup>11</sup>

The success of the Court cannot simply be accorded on the basis of the members of the Court, but also to the GTB Citizens and past elected members of the GTB Tribal Council. At certain times growing pains have existed as exemplified by various struggles

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<sup>8</sup> See Petoskey, *supra* note \_\_, at 369.

<sup>9</sup> Cf. *In re Adams*, 133 B.R. 191 (W.D. Mich. Bkrcty. 1991).

<sup>10</sup> See generally Hon. Michael F. Cavanaugh, *Michigan’s Story: State and Tribal Courts Try to Do the Right Thing*, 76 U. DET. MERCY L. REV. 709 (1999).

<sup>11</sup> GRAND TRAVERSE BAND CONST. art. V, § 2.

with the doctrine of separation of powers. These growing pains exist within the Grand Traverse Band in the same manner as the U.S. Government still struggles with the separation of governmental branches or any government with a system of checks and balances. Despite some common inter-governmental and intra-governmental disputes, controversial decisions and opinions issued by the GTB Tribal Court have been widely respected by the Tribal Council, GTB citizens, and non-citizens.

The GTB Tribal Judiciary has come a long way from way days of a part-time judge and three appellate justices who were not called upon to hear cases with any regularity. With a hefty budget, the Court now has a total of five appointed judicial officers; a Chief Judge, an associate judge, and three appellate justices. Moreover, there are three full-time court clerks, a court administrator, and a peacemaker. The GTB Restatement is a testament to the GTB Tribal Judiciary abiding by, pursuing, and exercising its constitutional judicial power.

The Grand Traverse Band's first two chief judges were both members of the Band – Michael D. Petoskey and JoAnne Cook. This Restatement of the Grand Traverse Band of Ottawa and Chippewa Indians is dedicated to them.

## **A RESTATEMENT OF THE COMMON LAW OF THE GRAND TRVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS**

### **§ 1 Administrative Law**

#### **§1.01 Standard of Review**

The tribal court defers to the decisions of tribal agencies unless one of the following factors is found: (1) the administrative action was not in accordance with law; (2) the administrative action was beyond the scope of the agency's authority; (3) the

administrative action was arbitrary and capricious; or (4) the administrative fact-finding was unsupported by substantial evidence. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority v. Yannett*, No. 93-12-36-CV-HA (Grand Traverse Band Tribal Court, April 18, 1994); *Grand Traverse Band of Ottawa and Chippewa Indians v. Comer*, No. 02-09-1351 (Grand Traverse Band Tribal Court, Feb. 25, 2003).

The tribal court's review will be of the record, not *de novo*. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority v. Yannett*, No. 93-12-36-CV-HA (Grand Traverse Band Tribal Court, April 18, 1994); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

The tribal courts will review the decision of a tribal agency *de novo* if (1) discovery tools are not made available to the grievant; and (2) proper effect is not given to the right to be represented by counsel. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

Under the rules of the Administrative Appeals Board (AAB), the court must first look to determine whether the agency abused its discretion; the court next looks at whether the agency decision was arbitrary and capricious; and finally the court looks at whether the agency complied with applicable laws. *Grand Traverse Band of Ottawa and Chippewa Indians v. Napont*, No. 2005-162-CV-CV (Grand Traverse Band Tribal Court, Jan. 17, 2006).

### **§1.02 Specific Subject Matters**

There must be a presumption that the Tribal Council actions in takings case acted properly under tribal law. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Appeals of employment decisions by a tribal agency are of the record, not *de novo*, to protect the integrity of the management involvement. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

### **§ 1.03 Exhaustion of Administrative Remedies**

Claimants against tribal administrative entities must first exhaust all administrative remedies before bringing suit in tribal court. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority v. Yannett*, No. 93-12-36-CV-HA (Grand Traverse Band Tribal Court, April 18, 1994); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996); *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000).

The failure to exhaust administrative remedies is a bar to judicial review. *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000).

The administrative appeal process provides an opportunity for the administrative agency to rectify and mistakes or errors made at the administrative level. It is inappropriate for the tribal court to simply substitute its judgment for that of the administrative agency. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority v. Yannett*, No. 93-12-36-CV-HA (Grand Traverse Band Tribal Court, April 18, 1994); *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000).

#### **§ 1.04 Waiver of Right of Appeal**

Allowing the period of time for administrative appeals to lapse constitutes a waiver of the right to bring suit in tribal court. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority v. Yannett*, No. 93-12-36-CV-HA (Grand Traverse Band Tribal Court, April 18, 1994).

Agency time limits on the right to appeal must be express and a matter of public record. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

#### **§ 1.05 Due Process**

Fairness in administrative hearings can be instilled by requiring that: (1) judicial discovery tools be made available to grievants; (2) grievants be advised that they may be represented by counsel at their own expense; and (3) grievants be given a reasonable amount of time to secure the services of counsel if they wish to be represented. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

The tribal agency must advise individuals affected by agency determinations that they have a right to appeal and the time frame for doing so. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

Whether a party may be represented by counsel and whether discover is available during the administrative process are factors to consider in determining whether the agency provided due process of law. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

The claimant must be allowed to present first at the hearing before the decision-maker. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

#### **§ 1.06 Employment**

The management loop is critical to effective and fair management of personnel matters. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

Under the rules of the Administrative Appeals Board (AAB), the court must first look to determine whether the agency abused its discretion; the court next looks at whether the agency decision was arbitrary and capricious; and finally the court looks at whether the agency complied with applicable laws. *Grand Traverse Band of Ottawa and Chippewa Indians v. Napont*, No. 2005-162-CV-CV (Grand Traverse Band Tribal Court, Jan. 17, 2006); *Mitchell v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 04-03-223-CV (Grand Traverse Band Tribal Court, Nov. 17, 2004).

Fundamental fairness requires that both individuals and tribal petitioners have the right to appeal an adverse decision before an administrative tribunal. *Grand Traverse Band of Ottawa and Chippewa Indians v. Comer*, No. 02-09-1351 (Grand Traverse Band Tribal Court, Feb. 25, 2003).

Tribal Council authority over tribally chartered subordinate organizations is dependent on the charter; and where the charter limits the Tribal Council's authority to reviewing the financial records, but not the management authority, of the housing entity, the Tribal Council has no right to enjoin the housing entity from making personnel decisions. *Grand Traverse Band of Ottawa and Chippewa Indians v. Grand Traverse Band Housing Entity*, No. 98-07-238-CV (Grand Traverse Band Tribal Court, August 14, 1998).

Participation of tribal counsel in administrative employment discharge hearing did not create an attorney-client relationship between hearing board and tribal counsel. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Tribal Court, Sept. 15, 2004).

#### **§ 1.07 Grounds for Appealing a Decision of a Tribal Agency**

A petitioner may bring suit to challenge a final decision of a tribal agency if the petitioner has exhausted all administrative remedies and alleges one of the following: (1) the administrative action was not in accordance with law; (2) the administrative action was beyond the scope of the agency's authority; (3) the administrative action was arbitrary and capricious; or (4) the administrative fact-finding was unsupported by substantial evidence. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority v. Yannett*, No. 93-12-36-CV-HA (Grand Traverse Band Tribal Court, April 18, 1994).

#### **§ 1.08 Administrative Record**

The tribal cannot blindly accord deference to the tribal agency decision without reviewing the complete administrative factual record and the administrative structure and process. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).



## **§ 1.09 Administrative Manual**

The tribal court recommended that the tribal agency provide a handbook to individuals affected by agency decisions that provides (1) a brief overview of the administrative process; (2) a uniform process for conducting such hearings; and (3) checklists to ensure uniformity, due process, and that everything has been covered and not forgotten. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

## **§ 1.10 Tribal Council Participation**

If the Tribal Council acts as the decision-maker in an agency action, the Council must not hear facts or agency legal positions prior to the time of the hearing. The Council may be briefed of procedural issues, but not substantive issues. The danger of proceeding otherwise is to run the risk of making a premature judgment and/or being perceived as a mere “rubber stamp” of tribal administration. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

Tribal Council authority over tribally chartered subordinate organizations is dependent on the charter; and where the charter limits the Tribal Council’s authority to reviewing the financial records, but not the management authority, of the housing entity, the Tribal Council has no right to enjoin the housing entity from making personnel decisions. *Grand Traverse Band of Ottawa and Chippewa Indians v. Grand Traverse Band Housing Entity*, No. 98-07-238-CV (Grand Traverse Band Tribal Court, August 14, 1998).

## **§ 2 Constitutional Law**

### **§ 2.01 1978 Interim Tribal Constitution**

From the administrative recognition of the tribe in 1980 to adoption of the tribal constitution in 1988, an interim Tribal Council carried out governmental activity. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff’d*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); Determination for Federal Acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians as an Indian Tribe, 45 FED. REG. 19,321 (March 25, 1980).

The constitution of 1978 authorized the interim Tribal Council to take whatever actions necessary for economic development not inconsistent with that constitution. GRAND TRAVERSE BAND CONST. art. VI, §§ 1(e), (o), and 2 (1978); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

## § 2.02 1988 Tribal Constitution

The tribal membership adopted the tribal constitution in 1988 after federal recognition in 1980. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); Determination for Federal Acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians as an Indian Tribe, 45 FED. REG. 19,321 (March 25, 1980).

## § 2.03 Interpreting the Constitution

The Tribal Court has the power to interpret the Constitution. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

The tribal constitution should be read as a whole to be fully understood and appreciated. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

The court must give effect to the plain meaning of the words in the Constitution as understood by the people who adopted it. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

Ambiguous terms in the Constitution must be interpreted by the tribal courts. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Court of Appeals, February 11, 2000).

Constitutional provisions should be interpreted to reflect the realities of tribal government operations. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Specific constitutional language prevails over the general language in the same document if there is a dispute about the meaning and intent of the writing. Specific language has more meaning and depth. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

Given the relative newness of the tribal government, the tribal government tends to be reactive rather than proactive. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

The language in the constitution's preamble indicating that a purpose of the constitution is to "protect our homeland" is to be read in conjunction with the Tribal Council's other generally enumerated powers. GRAND TRAVERSE BAND CONST. Preamble (1988); *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

The foundations of a tribal community are built upon internal perspectives. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 2.04 Separation of Powers**

The tribal separation of powers mandate in the constitution provides that the Tribal Council enact the substantive law of the tribe, while the Tribal Judiciary adopts Court Rules to provide for the tribal court practice and procedure. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

The tribal courts have jurisdiction to review an administrative decision of a tribal agency due to the checks and balances that must exist within the separation of powers in order to ensure that the individual branches of government are accountable. The Judicial branch is a check and balance of the Tribal Council and *vice versa*. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

#### **§ 2.05 Representative Government**

Adoption of tribal constitution in 1988 ratified the ad hoc tribal governmental structure whereby the tribal leadership makes decisions as representatives of the tribal membership. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

#### **§ 2.06 Delegation of Powers and Authorities of the Tribal Membership to the Tribal Council**

The tribal constitution incorporates the wishes of the tribal membership to vest the Tribal Council with "all the sovereign governmental executive and legislative powers of the Tribe...." GRAND TRAVERSE BAND CONST. art. IV, § 1 (1988); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-

001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Despite superficial desirability of engaging tribal community input for each tribal leadership decision, widespread community input is neither desirable nor practical in reality. Hence, the tribal constitution provides for representative government whereby Tribal Council makes decisions for the tribal membership with limited input from the tribal community. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Inherent power of the tribal membership is the right to elect and recall their elected representatives. GRAND TRAVERSE BAND CONST. art. VII (1988); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

#### **§ 2.07 Legislative Authority**

The tribal court has no authority to exercise a lawmaking function under the Constitution and does not have the power to make substantive law. *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

#### **§ 2.08 Political Questions**

The tribal courts will not expound upon the policy or political implications of a decision by the political branch of tribal government. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

Tribal membership decisions are political questions answerable only by the Tribal Council. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, February 22, 1999).

#### **§ 2.09 Advisory Opinions**

The tribal court is not empowered by the constitution to issue advisory opinions. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

#### **§ 2.10 Tribal Council Plenary Powers**

The tribal constitution provides plenary powers – not enumerated powers – to the Tribal Council. Specific enumeration of authority in the tribal constitution is not necessary to authorize the Tribal Council to act. GRAND TRAVERSE BAND CONST. art. IV, § 1 (1988); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995)..

Article IV of the constitution was drafted to give broad powers to the legislative and executive body that could give life to whatever sovereign powers the tribe could exercise under law. The drafters intended to avoid instances of unintended limitation on the sovereign powers of the tribe that might have resulted from the listing of enumerated powers. GRAND TRAVERSE BAND CONST. art IV; *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

Article IV, Section 1's listing of powers of the Tribal Council is intended to be a list of examples of powers and not an exhaustive list. Every power of the Tribal Council need not be expressly listed. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

Article IV is intended to be a broad grant of authority to the Tribal Council in order to fulfill the tribe's role as a sovereign entity. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

The Tribal Council is the ultimate legislative and executive decision-maker. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

## **§ 2.11 Tribal Lands**

All of the land owned by the Grand Traverse Band belongs to the tribe as a whole. Land ownership and land use decisions are made based upon all the various governmental, economic development, and residential needs. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Article IV, section 1(d) of the constitution lists the power of the Tribal Council to acquire land and other assets “deemed beneficial to the ... Band....” In dicta, the tribal court noted that land or assets that lose their utility to the tribe may be disposed. GRAND

TRAVERSE BAND CONST. art. IV, § 1(d) (1988); *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

Article IV, section 1(e) of the constitution lists the power of the Tribal Council to prevent the sale of land and other tribal asserts. This provision implies that the Tribal Council's authority to sell tribal lands must lie someone. The only place this power can lie is in the Tribal Council. GRAND TRAVERSE BAND CONST. art. IV, § 1(e) (1988); *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

Article IV, section 1(h) of the constitution lists the power of the Tribal Council to manage and control the "property" of the tribe. This provision does not preclude the Tribal Council from selling tribal lands. GRAND TRAVERSE BAND CONST. art. IV, § 1(h) (1988); *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

#### **§ 2.12 Validity of Actions Taken by Tribal Council**

Actions taken by the Tribal Council, including waivers of immunity, are presumed valid, especially where the Council acted by resolution, carefully considered its actions, and was acting to encourage the tribal memberships common good. GRAND TRAVERSE BAND CONST. art. III, § 5(e)(1) (1988); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Tribal Council is authorized to sell its assets, including lands, in accordance with the constitution. GRAND TRAVERSE BAND CONST. Preamble, art. I, art. IV, §§ 1(d), (e), and (h), and art. XI (1988); *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

#### **§ 2.13 Validity of Actions Taken by Individual Tribal Council Members**

Where two Tribal Council members allegedly promised to allow a discharged employee to re-apply for tribal employment, there is no valid Tribal Council action. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

#### **§ 2.14 Validity of Actions Taken by Interim Tribal Council**

Validly enacted resolutions of the Interim Tribal Council remain valid after the ratification of the tribal constitution in 1988. It is unreasonable to expect that the tribal government would cease activity until it had the opportunity to consider whether ongoing relationships and operations were consistent with the new constitution. GRAND TRAVERSE BAND CONST. art. IV, § 1 (1988); *Adams v. Grand Traverse Band of Ottawa and*

*Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

§ 2.15 Judicial Power

See **Tribal Courts**

§ 2.16 Other Specific Constitutional Provisions

§ 2.16[A] Article I

Article I of the constitution defines the extent of tribal “territory” of the tribe and distinguishes it from the concepts of “service area” and “jurisdiction.” *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

§ 2.16[B] Article IV

The Tribal Council is authorized by Article IV, Section 1(m) of the Constitution to charter subordinate organizations. *Grand Traverse Band of Ottawa and Chippewa Indians v. Grand Traverse Band Housing Entity*, No. 98-07-238-CV (Grand Traverse Band Tribal Court, August 14, 1998).

§ 2.16[C] Article V

Article V, section 2 of the constitution defines the judicial power of the tribal court. This power extends to “cases arising under” tribal law. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

§ 2.16[D] Article XI

Article XI of the constitution deals with land use and natural resource conservation planning, zoning, land use assignments, lease, and grants of rights-of-way. These are all encumbrances on the land. The Tribal Council is authorized, under this provision, to consent to the imposition of these encumbrances on land. GRAND TRAVERSE BAND CONST. art. XI; *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

Any encumbrance not specified under this provision must be submitted to a tribal vote. GRAND TRAVERSE BAND CONST. art. XI; *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

The primary purpose of this Article was to put limits on the power of the Tribal Council to place burdens on tribal lands. GRAND TRAVERSE BAND CONST. art. XI; *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

### **§ 3 Contracts**

#### **§ 3.01 Contract Formation**

A contract is an agreement, with the meeting of the minds of the parties at its core. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

#### **§ 3.02 Employment Contract**

Tribal Council decision to allow a discharged employee the opportunity to re-apply does not constitute a contract creating any obligation to the tribe. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

The mutual right to terminate a contract for employment is incompatible with a just cause employment relationship. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

#### **§ 3.03 Contract Interpretation**

Ambiguous contract provisions are to be interpreted against the drafter or the party with superior bargaining power. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

A contract containing a forum selection clause that requires all disputes to be resolved in “tribal court” does not derive the appellate court of jurisdiction to hear an appeal of the tribal court’s decision. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Contract provisions that were valid at the time a contract dispute arises remain the governing provisions even after the contract terms are amended. *Hueter v. Grand Traverse Band Housing Authority*, No. 96-03-027-CV (Grand Traverse Band Tribal Court, February 4, 1998).



A writing is interpreted as a whole and all writings that are part of the same transaction are interpreted together. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004)

The tribal court adopted Restatement (Second) of Contracts § 203, which provided for standards of preferences are applicable to contract interpretation, as follows: (1) an interpretation which gives reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect; (2) express terms are given greater weight than course of performance, course of dealing, and usage of trade, course of performance is given greater weight than course of dealing, and course of dealing is given greater weight than usage of trade; (3) specific terms and exact terms are given greater weight than general language; (4) separately negotiated or added terms are given great weight than standardized terms or other terms not separately negotiated. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

### **§ 3.04 Parol Evidence Rule**

The parol evidence rule provides that when two parties have made a contract and have expressed it in a writing that they both have agreed to as being a complete and accurate integration of that contract, extrinsic evidence of antecedent and contemporaneous understandings and negotiations that contradict or vary the writing are inadmissible. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

### **§ 3.05 Contract Remedies**

Contract term allowing for disputes to be adjudicated in tribal court but not limiting remedies will be interpreted against the drafter, in this case the tribe, to allow for monetary damages in the event the plaintiff proves its case against the tribe. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Contract right to repossess tribal member fishing boar cannot give rise to intentional tort action. *Winstone v. Old Kent Bank—Grand Traverse*, No. 98-04-127-CV (Grand Traverse Band Tribal Court, February 11, 2000).

### **§ 3.06 Breach**

When one party to a contract repudiates or breaches the contract, this may discharge the other party from further duty under the contract. *Grand Traverse Band of Ottawa and Chippewa Indians v. C.H. Smith Co., Inc.*, No. 00-07-355-CV (Grand Traverse Band Tribal Court, March 15, 2002).

### **§ 3.07 Rescission**

Rescission requires a mutual agreement by the parties to an existing contract to discharge and terminate their duties under it. *Grand Traverse Band of Ottawa and Chippewa Indians v. C.H. Smith Co., Inc.*, No. 00-07-355-CV (Grand Traverse Band Tribal Court, March 15, 2002).

## **§ 4 Criminal Law**

### **§ 4.01 Tribal Criminal Law**

Tribal criminal law should be construed as being consistent with Resolution No. 85-363, which adopted Michigan law to the extent it does not conflict with tribal law or applicable federal law, in order to preclude gaps that would allow criminal behavior to go unpunished. *People v. Chippewa*, No. 91-06-026-CR (Grand Traverse Band Tribal Court, Aug. 7, 1991).

Tribal criminal codes adopted after Resolution No. 85-363, which adopted Michigan law to the extent it does not conflict with tribal law or applicable federal law, did not expressly supercede Resolution No. 85-363. *People v. Chippewa*, No. 91-06-026-CR (Grand Traverse Band Tribal Court, Aug. 7, 1991).

### **§ 4.02 Limitation of Criminal Penalties**

Tribal criminal penalties are limited by the Indian Civil Rights Act to 365 days in jail or \$5000 in criminal fines, plus costs. *People v. Anderson*, No.00-06-310-CR-APP (Grand Traverse Band Court of Appeals, Aug. 22, 2001).

### **§ 4.03 Credit for Time Served**

Time served during the disposition of a criminal prosecution must be counted in the context of the Indian Civil Rights Act limitation on tribal criminal penalties. *People v. Anderson*, No.00-06-310-CR-APP (Grand Traverse Band Court of Appeals, Aug. 22, 2001).

### **§ 4.04 Motions to Consider Jail Time**

Motions from the tribal prosecutor to consider jail time not filed within one week are not timely. *People v. Southbird*, No. 01-12-765-CR (Grand Traverse Band Tribal Court, May 31, 2002).

A motion to consider jail time will likely be denied if the underlying charge, *e.g.*, littering, is not the kind of crime that tends to require jail time. *Grand Traverse Band of Ottawa and Chippewa Indians v. C.H. Smith Co., Inc.*, No. 00-07-355-CV (Grand Traverse Band Tribal Court, March 15, 2002).

## **§ 5 Elections**

### **§ 5.01 Authority of Election Board**

Election Board decisions regarding election challenges are final and non-appealable. GRAND TRAVERSE BAND CONSTITUTION art. VII, § 5(a); *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

#### **§ 5.02 Burden of Proof**

The burden of proof that the Grand Traverse Band Election Board or any election candidates violated the election code or the Constitution rests with election challengers. *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

An election challenger must meet the standards for issuing an injunction in order to convince the court to issue a stay delaying an election. *Barrientoz v. Grand Traverse Band Election Board*, No. 2006-316-CV-CV (Grand Traverse Band Tribal Court, May 12, 2006).

Election challengers must demonstrate by clear and convincing evidence that (1) the Election Board failed to comply with its own mandated policies and procedures in conducting and certifying the election; or (2) the Election Board followed its policies and procedures but the policies and procedures were unconstitutional; or (3) the Election Board certified the election despite improper or fraudulent practices that it had a duty to monitor and prevent. *Barrientoz v. Grand Traverse Band Election Board*, No. 2006-316-CV-CV (Grand Traverse Band Tribal Court, May 12, 2006).

Disagreement with the Grand Traverse Band Election Board over the eligibility of tribal election candidates is insufficient for the tribal court to reverse the Election Board's determination. *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

#### **§ 5.03 Election Board Conflicts of Interest**

No conflict of interest exists when the step-mother of an election board member is a candidate for public office. *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

#### **§ 5.04 Official Immunity of Election Board Officers**

Election Board officers are entitled to official immunity as articulated in *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993). *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

#### **§ 5.05 Authority of Tribal Court**

The tribal court has constitutional authority to remove Election Board officers who are alleged to have committed improprieties. GRAND TRAVERSE BAND CONSTITUTION art. VII, § 5; *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

#### **§ 5.06 Laches**

The doctrine of laches applies to tribal election challenges. *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

The time to complain about a wrong is the time when the wrong occurs. *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

#### **§ 5.07 Remedies**

The Tribal Court has the authority to issue an order staying a primary or general election, provided the election challenger demonstrates by clear and convincing evidence that a constitutional violation occurred, the public interest favors a stay, and the challenger demonstrates a likelihood of success on the merits. *Barrientoz v. Grand Traverse Band Election Board*, No. 2006-316-CV-CV (Grand Traverse Band Tribal Court, May 12, 2006).

### **§ 6 Employment**

#### **§ 6.01 Wrongful Termination**

##### **§ 6.01[A] At Will**

The mutual right to terminate a contract for employment is incompatible with a just cause employment relationship. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

The tribal personnel policy that disclaims the establishment of a contract between the employer and employee does not operate to create a just cause employment relationship. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

##### **§ 6.01[B] Just Cause**

Former Tribal Conservation Officer that had received a drunk driving conviction could not meet the job requirement of being insurance under the tribe's motor vehicle insurance coverage after her conviction. Tribe had just cause to discharge employee. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

Failure to submit note from doctor to employer to excuse absence from work may constitute just cause for termination. *TwoCrow v. Grand Traverse Band Economic Development Authority*, No. 94-07-003-CV (Grand Traverse Band Tribal Court, Mar. 14, 2003).

Theft, conversion, or embezzlement all constitute just cause for the termination of employment. *Grand Traverse Band of Ottawa and Chippewa Indians v. Diaz*, No. 04-03-290-CV (Grand Traverse Band Tribal Court, Nov. 9, 2005).

#### **§ 6.02 Equal Protection**

A claim may be brought for wrongful termination in violation of the equal protection clause of the constitution. GRAND TRAVERSE BAND CONST. art. X, § 1(h) (1988); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

In order to prove gender discrimination, a discharged female employee must show that she was treated differently than a similarly-situated male employee. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

#### **§ 6.03 Tribal Government Personnel Manual**

Tribal government personnel manual's listing of reasons to discharge an employee for "just cause" was not exhaustive. The list was preceded by the language, "not limited to the following." As such, the list was intended to be illustrative and not all-inclusive. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

The tribal personnel policy that disclaims the establishment of a contract between the employer and employee does not operate to create a just cause employment relationship. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

#### **§ 6.04 Summary Disposition**

The tribal court will deny a motion for summary disposition on the basis that the plaintiff has failed to state a claim on which relief can be granted where a plaintiff has alleged facts that might constitute a claim for wrongful termination. *TwoCrow v. Grand Traverse Band Economic Development Authority*, No. 94-07-003-CV (Grand Traverse Band Tribal Court, April 15, 1996).

#### **§ 6.05 Administrative Appeals**

Constitutional claims that arise within the context of a personnel matter must first be presented at the administrative level. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

The management loop is critical to effective and fair management of personnel matters. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

**§ 6.05[A]      Standard of Review**

Appeals of employment decisions by a tribal agency are of the record, not *de novo*, to protect the integrity of the management involvement. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

Under the rules of the Administrative Appeals Board (AAB), the court must first look to determine whether the agency abused its discretion; the court next looks at whether the agency decision was arbitrary and capricious; and finally the court looks at whether the agency complied with applicable laws. *Grand Traverse Band of Ottawa and Chippewa Indians v. Napont*, No. 2005-162-CV-CV (Grand Traverse Band Tribal Court, Jan. 17, 2006); *Mitchell v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 04-03-223-CV (Grand Traverse Band Tribal Court, Nov. 17, 2004).

Tribal court will review appeal of administrative decision to terminate employment where the record of the administrative hearing is incomplete. *Stewart v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 02-01-784-CV (Grand Traverse Band Tribal Court, Oct. 21, 2002).

Employee's subjective and unreasonable failure to understand the administrative appeals board decision does not justify reversal of the board. *Mitchell v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 04-03-223-CV (Grand Traverse Band Tribal Court, Nov. 17, 2004).

**§ 6.05[B]      Conflict of Interest**

Participation of tribal counsel in administrative employment discharge hearing did not create an attorney-client relationship between hearing board and tribal counsel. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Tribal Court, Sept. 15, 2004).

**§ 6.06 COBRA**

Tribe properly denied the extension of Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits beyond the 18 months as required by federal law because petitioner did not provide evidence or testimony that she qualified for extended benefits. *Fall v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 03-07-560-CV-APP (Grand Traverse Band Tribal Court, Aug. 25, 2004).

**§ 7      Family Law**

### **§ 7.01 Policy of the Grand Traverse Band**

Children ought to have healthy, productive, and enriching relationships with all members of their extended families. *In the Matter of D. D.*, No. 97-11-083-CV-DR (Grand Traverse Band Tribal Court, February 1, 1998).

### **§ 7.02 Termination of Parental Rights**

The burden of proof in involuntary termination cases is clear and convincing evidence. 10 GRAND TRAVERSE BAND CODE § 125(b); *People v. Schocko*, No. 97-06-003-ICW (Grand Traverse Band Tribal Court, October 21, 1999).

Parent's conviction of a violent crime is grounds for termination of parental rights. 10 GRAND TRAVERSE BAND CODE § 125(b)(6); *People v. Schocko*, No. 97-06-003-ICW (Grand Traverse Band Tribal Court, October 21, 1999).

Parent's conviction of a felony that tends to prove the unfitness of the parent is grounds for termination of parental rights. 10 GRAND TRAVERSE BAND CODE § 125(b)(6); *People v. Schocko*, No. 97-06-003-ICW (Grand Traverse Band Tribal Court, October 21, 1999).

Parental rights do not arise from sexual relations found to constitute rape, including statutory rape. *In re K. C.*, No. 96-07-007-ICW (Grand Traverse Band Tribal Court, September 5, 1997), *aff'd*, *In re C.*, [docket number not available], (Grand Traverse Band Court of Appeals, March 12, 1999)..

Abandonment of parental responsibility by six (6) months or more justifies termination of parental rights in accordance with the Children's Code. *In re K. C.*, No. 96-07-007-ICW (Grand Traverse Band Tribal Court, September 5, 1997), *aff'd*, *In re C.*, [docket number not available], (Grand Traverse Band Court of Appeals, March 12, 1999); *People v. Schocko*, No. 97-06-003-ICW (Grand Traverse Band Tribal Court, October 21, 1999).

Bare claim of ineffective assistance of counsel does not justify vacating a tribal court decision terminating parental rights. *In re C.*, [docket number not available], (Grand Traverse Band Court of Appeals, March 12, 1999).

### **§ 7.03 Paternity**

The burden of proof to establish paternity is by a preponderance of the evidence. *In the Matter of Mullen*, No. 94-07-004-PAT (Grand Traverse Band Tribal Court, April 6, 1996).

Evidence to establish paternity must be relevant, competent, and material. *In the Matter of Mullen*, No. 94-07-004-PAT (Grand Traverse Band Tribal Court, April 6, 1996).

### **§ 7.04 Grandparent Visitation Rights**

Tribal court will apply, in absence of tribal law, the Michigan Child Custody Act in order to determine whether grandparent visitation is in the best interest of the child. *In the Matter of D. D.*, No. 97-11-083-CV-DR (Grand Traverse Band Tribal Court, February 1, 1998).

#### **§ 7.05 Standard of Protection**

25 U.S.C. § 1921, which requires federal and state courts to apply the higher standard of protection to the rights of children in child custody cases, does not apply in tribal courts. *In re C.*, [docket number not available], (Grand Traverse Band Court of Appeals, March 12, 1999).

Appellate review of tribal court determinations regarding the abandonment of parent-child relationship will be on a clear error standard. *In re C.*, [docket number not available], (Grand Traverse Band Court of Appeals, March 12, 1999).

Domestic violence is a factor in the best interests of the child analysis. 10 GRAND TRAVERSE BAND CODE § 102(b); Kathryn A. Ritcheske, *Liability of Non-Indian Batterers in Indian Country: A Jurisdictional Analysis*, 14 TEX. J. WOMEN & L. 201 (2005).

#### **§ 7.06 Divorce**

Consent judgment dissolving divorce will be effective upon the filing of the judgment in the offices of the tribal court. *Denoyer v. Chambers*, No. 00-06-213-CV-DIV (Grand Traverse Band Tribal Court, March 19, 2001).

Grand Traverse County Circuit Court retains jurisdiction over the divorce action for the purpose of enforcing the parties' timely compliance. *Denoyer v. Chambers*, No. 00-06-213-CV-DIV (Grand Traverse Band Tribal Court, March 19, 2001).

#### **§ 8 Fishing**

Fisherman liable for unattended nets in violation of regulations where nets contained entirely decayed fish. *People v. Duhamel*, No. 96-10-038-CCV (Grand Traverse Band Conservation Court, March 8, 1997).

Fisherman liable for costs to tribe's conservation department to dispose of rotting fish where fisherman waited more than two days to take action and where the stench from the rotting fish burned the senses. *People v. Duhamel*, No. 96-10-038-CCV (Grand Traverse Band Conservation Court, March 8, 1997).

Fisherman's claim that he cuts nets of another fisherman for safety reasons unsupported by the evidence, which tended to show that he cut the nets maliciously. *People v. Raphael*, No. 00-03-131-CR (Grand Traverse Band Tribal Court, June 23, 2000).

#### **§ 9 Gaming**



## § 9.01 Per Capita Payments

### § 9.01[A] Garnishment

In accordance with the Revenue Allocation Ordinance, prior to the deposit of per capita funds in tribal trust accounts, the funds of incarcerated tribal members are subject to garnishment and/or attachment in satisfaction of Tribal Court obligations, including foreign judgments domesticated in Tribal Court. 18 GRAND TRAVERSE BAND CODE § 1605(k);<sup>12</sup> *Williams v. Martell*, No. 95-11-146-CV-FJ (Grand Traverse Band Tribal Court, May 22, 1998), *aff'd*, *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999).

Tribal court rules require nine days notice by mail – applying Michigan court rules – in delivering notice to an incarcerated tribal member of a proposed garnishment of per capita payments. *Williams v. Martell*, No. 97-01-001-CV-APP (Grand Traverse Band Court of Appeals, March 21, 1998).

### § 9.01[B] Incompetent Tribal Members: Prisoners

Incarcerated tribal members are legally incompetent for purposes of the Revenue Allocation Ordinance. 18 GRAND TRAVERSE BAND CODE § 1605(k);<sup>13</sup> *In the Matter of Case*, No. 96-01-001-PC (Grand Traverse Band Tribal Court, May 8, 1996); *Williams v. Martell*, No. 95-11-146-CV-FJ (Grand Traverse Band Tribal Court, May 22, 1998), *aff'd*, *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999).

Incarcerated tribal members are not subject to forfeiture of any per capita gaming revenue distribution for failure to comply with any legal obligations under the Revenue Ordinance. 18 GRAND TRAVERSE BAND CODE § 1605(k); *In the Matter of Case*, No. 96-01-001-PC (Grand Traverse Band Tribal Court, May 8, 1996); *Williams v. Martell*, No. 95-11-146-CV-FJ (Grand Traverse Band Tribal Court, May 22, 1998), *aff'd*, *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999).

The Tribal Council is obligated via statute to develop procedures to implement 18 GTBC § 1605(k). *In the Matter of Case*, No. 96-01-001-PC (Grand Traverse Band Tribal Court, May 8, 1996); *Williams v. Martell*, No. 95-11-146-CV-FJ (Grand Traverse Band Tribal Court, May 22, 1998), *aff'd*, *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999).

The Grand Traverse Band fiscal department must establish individual trust accounts for all incarcerated tribal members for the 1994 and 1995 per capita gaming revenue distribution cycles, excepting those members who authorized their per capita

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<sup>12</sup> 18 GTBC § 1605(k) has been amended by Grand Traverse Band Tribal Council Resolution No. 07-25.1742 (Jan. 17, 2007).

<sup>13</sup> 18 GTBC § 1605(k) has been amended by Grand Traverse Band Tribal Council Resolution No. 07-25.1742 (Jan. 17, 2007).

funds distributed to friends and family. *In the Matter of Case*, No. 96-01-001-PC (Grand Traverse Band Tribal Court, May 8, 1996), *as amended on reh'g*, No. 96-01-001-PC (Grand Traverse Band Tribal Court, June 25, 1996).

### **§ 9.01[C]      Incompetent Tribal Members (Minors)**

It is not repugnant to the public policy of the Grand Traverse Band to invade minor per capita trust funds to provide for the minor's health and welfare. *Oceana County v. S.C.*, No. 01-03-120-FJ (Grand Traverse Band Tribal Court, Nov. 27, 2001), *aff'd*, No. 02-03-772-APP (Grand Traverse Band Court of Appeals, Aug., 14, 2002).

Grand Traverse Band courts must follow the Michigan Revised Probate Code, M.C.L.A. § 700.1 et seq., as guidelines for establishing access to minor trust funds. 18 GRAND TRAVERSE BAND TRIBAL CODE § 1605(c); *Oceana County v. S.C.*, No. 01-03-120-FJ (Grand Traverse Band Tribal Court, Nov. 27, 2001), *aff'd*, No. 02-03-772-APP (Grand Traverse Band Court of Appeals, Aug., 14, 2002).

The court grants the county's request for reimbursement for providing emergency services to minor. *Oceana County v. S.C.*, No. 01-03-120-FJ (Grand Traverse Band Tribal Court, Nov. 27, 2001), *aff'd*, No. 02-03-772-APP (Grand Traverse Band Court of Appeals, Aug., 14, 2002).

Modeling and acting classes cannot be considered an educational necessity warranting access to the minor trust fund to pay for such skills, adopting the reasoning in *Seidel v. Mohegan Tribe of Indians of Connecticut*, 33 Indian L. Rep. 6028 (Mohegan Tribal Court 2005). *In re the Matter of W.*, No. 2006-323-CV-MT (Grand Traverse Band Tribal Court, May 30, 2006).

## **§ 10    Housing**

### **§ 10.01      Subordinate Organizations**

The Tribal Council is authorized by Article IV, Section 1(m) of the Constitution to charter subordinate organizations. *Grand Traverse Band of Ottawa and Chippewa Indians v. Grand Traverse Band Housing Entity*, No. 98-07-238-CV (Grand Traverse Band Tribal Court, August 14, 1998).

Tribal Council authority over tribally chartered subordinate organizations is dependent on the charter; and where the charter limits the Tribal Council's authority to reviewing the financial records, but not the management authority, of the housing entity, the Tribal Council has no right to enjoin the housing entity from making personnel decisions. *Grand Traverse Band of Ottawa and Chippewa Indians v. Grand Traverse Band Housing Entity*, No. 98-07-238-CV (Grand Traverse Band Tribal Court, August 14, 1998).

The Tribal Council may eliminate the charter of subordinate organizations and subsume them into the tribal government as a department. *Shananaquet v. Grand*

*Traverse Band of Ottawa and Chippewa Indians Housing Dept.*, No. 02-03-895-CV (Grand Traverse Band Tribal Court, April 23, 2002).

**§ 10.02**      Eviction

A tenant that refuses to leave the leasehold when the lease is up is a holdover tenant and must be ordered to vacate the premises. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority v. Yannett*, No. 93-12-36-CV-HA (Grand Traverse Band Tribal Court, April 18, 1994).

Tenants in tribal housing are entitled to quiet enjoyment of their premises. *Antoine v. Grand Traverse Band Housing Department/Authority*, No. 01-02-034-CV (Grand Traverse Band Tribal Court, February 28, 2001).

The Band and the tenant must comply with the terms of the eviction process. *Antoine v. Grand Traverse Band Housing Department/Authority*, No. 01-02-034-CV (Grand Traverse Band Tribal Court, February 28, 2001).

Failure to pay rent owed to the tribal housing department is not excused by alleged defects in the home or lack of repairs completed by the tribe. *Grand Traverse Band of Ottawa and Chippewa Indians Housing Dept. v. Crowley*, No. 04-10-665-CV (Grand Traverse Band Tribal Court, Oct. 5, 2005).

**§ 11**      **Judgments**

**§ 11.01**      Garnishment; Attachment

Under laws of agency, when an agent is in possession of goods of the principal, it is ordinarily proper for a creditor (judgment creditor, state court friends of court, etc.) to institute garnishment or attachment proceedings against the agent. *In the Matter of Raphael*, No. 97-12-141-FJ-LC (Grand Traverse Band Tribal Court, February 23, 1998).

**§ 11.02**      Indian Claims Commission Judgment Distribution Funds

Judgments funds distributed from the Indian Claims Commission proceeds obtained in P.L. 105-143 may be attached or garnished to satisfy state court judgments. GRAND TRAVERSE BAND TRIBAL COURT RULES Chap. 10; MICHIGAN COURT RULE 2.615; *In the Matter of Raphael*, No. 97-12-141-FJ-LC (Grand Traverse Band Tribal Court, February 23, 1998).

**§ 11.03**      Child Support

The Tribal Council has legislatively recognized the public policy interest in assuring that children receive support from their fathers. 18 GTBC § 1609; *In the Matter of Raphael*, No. 97-12-141-FJ-LC (Grand Traverse Band Tribal Court, February 23, 1998).

**§ 12**      **Individual Rights**

**§ 12.01**      Due Process

Due process requires at a minimum that there is a hearing with notice. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

Greater due process protections depend on the right being affected. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Property rights are protected by the due process provision of the Constitution. GRAND TRAVERSE BAND CONST. art. X, § 1(h); *Antoine v. Grand Traverse Band Housing Department/Authority*, No. 01-02-034-CV (Grand Traverse Band Tribal Court, February 28, 2001).

**§ 12.02**      Agency Action

Fairness in administrative hearings can be instilled by requiring that: (1) judicial discovery tools be made available to grievants; (2) grievants be advised that they may be represented by counsel at their own expense; and (3) grievants be given a reasonable amount of time to secure the services of counsel if they wish to be represented. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

Agency time limits on the right to appeal must be express and a matter of public record. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

Whether a party may be represented by counsel and whether discover is available during the administrative process are factors to consider in determining whether the agency provided due process of law. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

**§ 12.03**      Equal Protection

**§ 12.03[A]**    Wrongful Termination

Constitutional claims that arise within the context of a personnel matter must first be presented at the administrative level. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

**§ 12.03[B]**    Gender Discrimination

In order to prove gender discrimination, a discharged female employee must show that she was treated differently than a similarly-situated male employee. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

A female tribal officer in the 1990s and a male tribal officer in the 1980s are not similarly situated where motor vehicle insurance companies altered their requirements to insure tribal officers in the intervening time period. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, July 20, 2001).

#### **§ 12.04**      Nonmembers

Article X of the Constitution does not apply to nonmembers. *Bonacci v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-04-176-CV (Grand Traverse Band Tribal Court, Jan. 1, 2003); *Fall v. Grand Traverse Band of Ottawa & Chippewa Indians*, No. 03-04-308-CV (Grand Traverse Band Tribal Court, June 26, 2003).

#### **§ 13**      **Probate**

Uncontested wills will be accepted as valid. *In the Matter of Lacroix*, No. 00-00-613-SE (Grand Traverse Band Tribal Court, January 5, 2001).

#### **§14**      **Property**

##### **§ 14.01**      Communal Ownership of Tribal Lands

All of the land owned by the Grand Traverse Band belongs to the tribe as a whole. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Individual tribal members do not have an absolute right to tribal land. There is not enough land for each tribal member to have a “share” for their personal use. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Almost all of the historical tribal lands of the Grand Traverse Band were dispossessed and, as a result, the modern day land base of the tribe is very limited. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Grand Traverse Band of Ottawa and Chippewa Indians v. Leelanau Indians, Inc.*, No. 83-834 (W.D. Mich., Jan 30, 1985).

The Grand Traverse Band is the successor to Leelanau Indians, Inc. and its land holdings and assets. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*,

No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Grand Traverse Band of Ottawa and Chippewa Indians v. Leelanau Indians, Inc.*, No. 83-834 (W.D. Mich., Jan 30, 1985).

**§ 14.02**            Assignment of Residential Lots on Tribal Lands

Residential lots on tribal lands are not “owned” by the tribal member who receives the assignment. The lot is leased to tribal members for residential purposes only and for a specified number of years. The assignment holder has a legal possessory interest only. The legal title to land held in trust for the tribe is held by the United States. The tribal government is the beneficiary under this trust. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Tribal members are not automatically entitled to the assignment of a residential lot on tribal lands. Residential lots on tribal lands are assigned based on particular criteria, with need at the forefront. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

**§ 14.03**            Leelanau Indians, Inc.

Leelanau Indians, Inc. had no legal authority whatsoever to make land use assignments of tribal land as of and after the date of the federal recognition of the Grand Traverse Band. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Any such lease or other alleged property interest is void *ab initio*. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

In dicta, the tribal appellate court asserted that the Tribal Council might have authority to ratify the land use assignments made by Leelanau Indians, Inc. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

**§ 14.04**            Encumbrances

An encumbrance placed legal interests, or burdens, on the land while the owner retains an ownership interest. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

**§ 14.05**            Takings

The Tribal Council must explicitly recognize a property interest before that interest becomes compensable under the just compensation clause of the constitution. GRAND TRAVERSE BAND CONST. art X, § 1(e) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

The constitutional principle of just compensation requires the government to fairly compensate owners of private property when they are deprived of their property interest(s) by action(s) of the tribal government. GRAND TRAVERSE BAND CONST. art X, § 1(e) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 14.06**      Due Process

The government must provide notice and an opportunity to be heard before taking the property interests of an individual. GRAND TRAVERSE BAND CONST. art X, §§ 1(e) and (h) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Antoine v. Grand Traverse Band Housing Department/Authority*, No. 01-02-034-CV (Grand Traverse Band Tribal Court, February 28, 2001).

The Tribal Council is not the ultimate decision-maker regarding the issue of just compensation for property takings. It is a party to negotiations regarding just compensation and would be in an unfair bargaining position. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

The Tribal Council, as a party, ought to be able to deliberate as a body and negotiate in the first instance just compensation resolutions with any lot assignment holder from which the tribe wants buy out. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Any errors by the Tribal Council after the provision of due process and just compensation are harmless. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 14.07**      Compensation

Just compensation is not the same as money damages. GRAND TRAVERSE BAND CONST. art X, § 1(e) (1988); GRAND TRAVERSE BAND CONST. art. XIII, § 2(c) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 14.08**      Compensable Property Interests

A land use assignment from Leelanau Indians, Inc. after the date of the federal recognition of the Grand Traverse Band is not a compensable or recognizable property interest. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

A political or moral claim to a lot assignment is not a compensable property interest. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

The Tribal Council's decision to negotiate for the compensation of the taking of a non-compensable property interest does not transform that interest into a compensable interest under the just compensation clause of the constitution. GRAND TRAVERSE BAND CONST. art X, § 1(e) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

The granting of another residential lot assignment may constitute just compensation for the taking of a residential lot assigned by Leelanau Indians, Inc., as the facts require. GRAND TRAVERSE BAND CONST. art X, § 1(e) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

A tribal residential lot has no appraisable commercial value. Value must be determined another way. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

A bay view is not a compensable interest. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 14.09**      Burden of Proof

There must be a presumption that the Tribal Council actions in takings case acted properly under tribal law. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

The owner of the alleged property interest bears the burden of proof of showing that the Tribal Council's just compensation decision was in error significant enough to require reversal of the decision. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).



The owner of the alleged property interest must show by clear and convincing evidence that the Tribal Council acted arbitrarily and capriciously or that the Tribal Council showed bias or absolutely no evidence supporting its decision. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

**§ 14.10**      Holdouts

The Tribal Council is not obligated to accede to the demands of a holdout property owner in a takings case, except to provide just compensation for the taking. GRAND TRAVERSE BAND CONST. art X, § 1(e) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

**§ 14.11**      Trespass

*See Torts.*

**§ 14.12**      Private Residential Leaseholds

The court of appeals will review the findings of fact in these matters under a “clear error” standard. *De Young v. Southbird*, No. 99-11-568-CV-SC (Grand Traverse Band Court of Appeals, March 6, 2001).

**§ 15**      **Sovereign Immunity**

**§ 15.01**      Tribal Sovereign Immunity

The tribal government has inherent tribal sovereign immunity derived from its sovereign status. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000); *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-09-321-CV (Grand Traverse Band Tribal Court, June 26, 2000), *aff'd*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001); *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000); *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000); *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority*, No. 01-06-375-CV (Grand Traverse Band Tribal Court, March 12, 2002); *Bonacci v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-04-176-CV (Grand Traverse Band Tribal Court, Jan. 1, 2003); *Fall v. Grand Traverse Band of Ottawa & Chippewa Indians*, No. 03-04-308-CV (Grand Traverse Band Tribal Court, June 26, 2003); *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand

Traverse Band Jan. 8, 2004); *Yannett v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-11-147-CV (Grand Traverse Band Tribal Court, Jan. 19, 2004); *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

Analogy to the governmental immunity enjoyed by the federal and state governments is misplaced. *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-09-321-CV (Grand Traverse Band Tribal Court, June 26, 2000), *aff'd*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001); *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000); *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000).

Sovereign immunity is an essential attribute of Indian tribes and serves to avoid interruption of tribal government operations by improper law suits and to protect public funds from improper distribution. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001.

Sovereign immunity may lead to circumstances of unjustness and unfairness. *Sliger v. Stalmack*, No. 99-10-490-CV (Grand Traverse Band Tribal Court, February 14, 2000); *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-09-321-CV (Grand Traverse Band Tribal Court, June 26, 2000), *aff'd*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001).

Vendors doing business with the Band could avoid the harsh results of sovereign immunity in the contracting process. *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001).

#### **§ 15.02**      Subject Matter Jurisdiction

Tribal courts have jurisdiction under tribal constitution and tribal law to determine whether tribe has waived its sovereign immunity or whether tribal officials have official immunity. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Tribal sovereign immunity deprives the tribal court of subject matter jurisdiction to hear claims against the Band. *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000).

#### **§ 15.03**      Authority to Waive Immunity

The tribal government has inherent authority to waive sovereign immunity. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development*

*Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Waivers of sovereign immunity must be clearly intended and clearly stated. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, August 27, 2001); *Sliger v. Stalmack*, No. 99-10-490-CV (Grand Traverse Band Tribal Court, February 14, 2000); *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001); *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000); *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000); *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

A finding of a waiver of sovereign immunity must be essential to resolving an appeal and it must be avoided if a less invasive legal finding can resolve the appeal. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, August 27, 2001); *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001).

#### **§ 15.04**      Tribal Official Immunity

Tribal officials are protected from individual liability if they are acting within their official capacities. 6 GRAND TRAVERSE BAND TRIBAL CODE § 104(a); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000); *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004)..

Tribal officers and managers could be personally liable if the trial court finds on the evidence that there is liability for actions that were entirely personal, clearly unauthorized by the parties' duties, and having nothing to do with any party's office. Tribal official action is presumed to be protected by official immunity unless it is clearly outside all allowable discretion or clearly contrary to the allowable range of their duties. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*,

No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Sliger v. Stalmack*, No. 99-10-490-CV (Grand Traverse Band Tribal Court, February 14, 2000).

The constitutional interest in the tribe's well-being that created the right to waive sovereign immunity for economic development purposes also requires that there be a strong protection to the officers and managers from legal damages for poor or questionable decisions. GRAND TRAVERSE BAND CONST. art. VI, §§ 1(a), (c), (d), (e), (h), (i), (j), (m), (n), 2, and 3 (1988); GRAND TRAVERSE BAND CONST. art. XIII, § 1 (1988); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Where a tribal enterprises director requests a tribal member to remove personal property from tribal lands dedicated to tribal economic development activities in accordance with a Tribal Council order, the director is acting within the scope of his authority. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Tribal officials alone cannot act to bind the Tribal Council. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 15.05**            Suits Against the Band in Tribal Courts By Tribal Members

##### **§ 15.05[A]**        Remedies

##### **§ 15.01[A][1]**        Money Damages

Damages are remedies for injuries to person or property. Damages are money awards. GRAND TRAVERSE BAND CONST. art XIII, § 2(b) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

In general, damages as a form of relief against the tribe are prohibited by the constitution unless sovereign immunity has been specifically waived. GRAND TRAVERSE BAND CONST. art XIII, § 2(b) (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000); *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000); *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority*, No. 01-06-375-CV (Grand Traverse Band Tribal Court, March 12, 2002); *Stewart v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 02-01-784-CV (Grand Traverse Band Tribal Court, Oct. 21, 2002); *Yannett v. Grand Traverse*

*Band of Ottawa and Chippewa Indians*, No. 95-11-147-CV (Grand Traverse Band Tribal Court, Jan. 19, 2004).

Just compensation for property takings by the tribal government is not damages otherwise prohibited by the tribal constitution. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

**§ 15.05[A][2]**            Vindication of Constitutional Rights

The Constitution waives the immunity of the Band for tribal members pursuing claims related to Constitutional rights violations. GRAND TRAVERSE BAND CONST. art XIII, § 2(a) (1988); *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001; *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000); *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000); *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000); *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority*, No. 01-06-375-CV (Grand Traverse Band Tribal Court, March 12, 2002); *Stewart v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 02-01-784-CV (Grand Traverse Band Tribal Court, Oct. 21, 2002).

Article XIII's waiver of immunity does not extend to nonmembers. *Bonacci v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-04-176-CV (Grand Traverse Band Tribal Court, Jan. 1, 2003).

Article XIII of the Constitution authorizing waivers of sovereign immunity and waiving sovereign immunity in certain tribal member law suits does not apply to the Economic Development Corporation. *Shananaquet v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 00-05-299-CV (Grand Traverse Band Tribal Court, Oct. 23, 2002), *aff'd*, No. 00-05-299-CV (Grand Traverse Band Court of Appeals, March 18, 2003), *overruled*, *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 04-08-566-CV-APP (Grand Traverse Band Court of Appeals, April 25, 2006).

The Economic Development Corporation is so inextricably intertwined with the Grand Traverse Band tribal government so as to be subject to the waivers of immunity contained in the Constitution. *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 04-08-566-CV-APP (Grand Traverse Band Court of Appeals, April 25, 2006).

**§ 15.05[A][3]**            Costs and Attorney Fees

The tribal court may award costs if a tribal member bringing a suit against the tribe prevails on the merits. GRAND TRAVERSE BAND CONST. art XIII, § 2(c) (1988);

*Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000).

The tribal court may not award costs and attorney fees to nonmembers under Article XIII, Section 2(c) of the Constitution. *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000).

The Tribal Judiciary rejects the so-called “American Rule” as applied to Tribal Council Member removal actions. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

#### **§ 15.06**      Suits Brought Against Tribal Business Entities

The Leelanau Sands Casinos retains tribal sovereign immunity. *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-09-321-CV (Grand Traverse Band Tribal Court, June 26, 2000), *aff'd*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001); *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

The Economic Development Corporation retains immunity from suit unless expressly waived in accordance with Corporation’s Charter. *Shananaquet v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 00-05-299-CV (Grand Traverse Band Tribal Court, Oct. 23, 2002), *aff'd*, No. 00-05-299-CV (Grand Traverse Band Court of Appeals, March 18, 2003); *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

The Economic Development Corporation is so inextricably intertwined with the Grand Traverse Band tribal government so as to be subject to the waivers of immunity contained in the Constitution. *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 04-08-566-CV-APP (Grand Traverse Band Court of Appeals, April 25, 2006).

#### **§ 15.07**      Suits Brought Against Tribal Subordinate Entities

Subordinate entities of the Band retain tribal sovereign immunity. *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority*, No. 01-06-375-CV (Grand Traverse Band Tribal Court, March 12, 2002); *Yannett v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-11-147-CV (Grand Traverse Band Tribal Court, Jan. 19, 2004); *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

**§ 15.08**      Express Waivers of Sovereign Immunity

**§ 15.08[A]**    Constitutional Waiver of Immunity

The Constitution waives the immunity of the Band for tribal members pursuing claims related to Constitutional rights violations. GRAND TRAVERSE BAND CONST. art XIII, § 2(a) (1988); *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001; *Hawkins v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-04-148-CV (Grand Traverse Band Tribal Court, February 7, 2000); *Sliger v. Stalmack*, No. 99-10-490-CV (Grand Traverse Band Tribal Court, February 14, 2000).

The Constitutional waiver of sovereign immunity does not apply to subordinate organizations. *Shananaquet v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 00-05-299-CV (Grand Traverse Band Tribal Court, Oct. 23, 2002), *aff'd*, No. 00-05-299-CV (Grand Traverse Band Court of Appeals, March 18, 2003).

**§ 15.08[B]**    Grand Traverse Band Housing Authority

Tribal Council Resolution No. 84-222, providing that the Tribal Council grants its “irrevocable consent” to allowing the Grand Traverse Band Housing Authority to “sue and be sued,” constitutes an express waiver of immunity of the Housing Authority from suit. *Hueter v. Grand Traverse Band Housing Authority*, No. 96-03-027-CV (Grand Traverse Band Tribal Court, February 4, 1998).

Tribal Council rescission of waiver of sovereign immunity of housing authority to suit operates to restore sovereign immunity. *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority*, No. 01-06-375-CV (Grand Traverse Band Tribal Court, March 12, 2002).

**§ 15.08[C]**    Grand Traverse Band Business Activities

Where the Band has not waived sovereign immunity for business purposes, the Band’s immunity extends to those business activities. GRAND TRAVERSE BAND CONSTITUTION art. XIII, § 1; *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-09-321-CV (Grand Traverse Band Tribal Court, June 26, 2000), *aff'd*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001); *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000).

A waiver of immunity for business purposes is limited to its terms. *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000).

A waiver of immunity for business purposes expires in accordance with its terms; here, at 180 days from the date of alleged injury. *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000).

The Economic Development Corporation's federal charter provides for the express waiver of its immunity from suit. 2 GRAND TRAVERSE BAND CODE §§ 203, 266, 218; *Shananaquet v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 00-05-299-CV (Grand Traverse Band Tribal Court, Oct. 23, 2002), *aff'd*, No. 00-05-299-CV (Grand Traverse Band Court of Appeals, March 18, 2003).

**§ 15.09**            Pre-1988 Constitution Waivers

Waivers of sovereign immunity enacted prior to 1988 are not rescinded by the adoption of the 1988 tribal constitution, especially where five (5) of the seven (7) Interim Tribal Council Members voted to waive immunity. GRAND TRAVERSE BAND CONST. art. XIII, § 1 (1988); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994); *Hueter v. Grand Traverse Band Housing Authority*, No. 96-03-027-CV (Grand Traverse Band Tribal Court, February 4, 1998).

**§ 15.10**            Implied Waivers of Sovereign Immunity

The tribal courts will not loosely interpret the Constitution or tribal statutes to find implied waivers of sovereign immunity. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, February 7, 2001), *modified*, August 27, 2001.

**§ 15.10[A]**            Tribal Economic Development Corporation

The Economic Development Corporation is so inextricably intertwined with the Grand Traverse Band tribal government so as to be subject to the waivers of immunity contained in the Constitution. *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 04-08-566-CV-APP (Grand Traverse Band Court of Appeals, April 25, 2006).

**§ 15.10[B]**            Counterclaims

Counterclaims brought by the Band or its business entities do not constitute waivers of immunity from suit. *D.F. Novak Construction Co., Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001).

**§ 15.10[C]**            Separation of Powers



The doctrine of separation of powers prohibits the tribal court from effectuating a waiver of sovereign immunity on the basis of individual fairness. Only the tribal legislature may waive the immunity of the tribe or its subordinates. *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

**§ 15.11**        Indian Civil Rights Act

The Indian Civil Rights Act does not operate as a waiver of the Band's sovereign immunity. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001; *Sliger v. Stalmack*, No. 99-10-490-CV (Grand Traverse Band Tribal Court, February 14, 2000); *Wilson v. Grand Traverse Band of Ottawa and Chippewa Indians Housing Authority*, No. 01-06-375-CV (Grand Traverse Band Tribal Court, March 12, 2002); *Bonacci v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-04-176-CV (Grand Traverse Band Tribal Court, Jan. 1, 2003); *Fall v. Grand Traverse Band of Ottawa & Chippewa Indians*, No. 03-04-308-CV (Grand Traverse Band Tribal Court, June 26, 2003); *Yannett v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-11-147-CV (Grand Traverse Band Tribal Court, Jan. 19, 2004).

The Indian Civil Rights Act does not operate to waive the immunity of the Economic Development Corporation. *Shananaquet v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Corp.*, No. 00-05-299-CV (Grand Traverse Band Tribal Court, Oct. 23, 2002), *aff'd*, No. 00-05-299-CV (Grand Traverse Band Court of Appeals, March 18, 2003).

**§ 15.12**        Revenue Allocation Ordinance

The Revenue Allocation Ordinance preserves tribal sovereign immunity. 18 GRAND TRAVERSE BAND CODE § 1614; *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001.

**§ 15.13**        Personnel Manual

The Personnel Manual disavows any waiver of sovereign immunity. *Sliger v. Stalmack*, No. 99-10-490-CV (Grand Traverse Band Tribal Court, February 14, 2000); *Fall v. Grand Traverse Band of Ottawa & Chippewa Indians*, No. 03-04-308-CV (Grand Traverse Band Tribal Court, June 26, 2003).

**§ 16**    **Sovereignty**

**§ 16.01**        Grand Traverse Band

The rights and powers of Indian tribes have long been recognized and well-established in the law. *Raphael v. Grand Traverse Band of Ottawa and Chippewa*

*Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

Indian tribes have the right to control their own internal matters and to develop based upon unique internal perspectives. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 16.02**      Leelanau Indians, Inc.

Upon federal recognition in 1980, the Grand Traverse Band became the legal and political successor to Leelanau Indians, Inc. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Grand Traverse Band of Ottawa and Chippewa Indians v. Leelanau Indians, Inc.*, No. 83-834 (W.D. Mich., Jan 30, 1985); Determination for Federal Acknowledgment of the Grand Traverse Band of Ottawa and Chippewa Indians as an Indian Tribe, 45 FED. REG. 19,321 (March 25, 1980).

Leelanau Indians, Inc. had no legal authority whatsoever to make land use assignments of tribal land as of and after the date of the federal recognition of the Grand Traverse Band. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

### **§ 17 State or Foreign Law**

#### **§ 17.01**      External Law

External rules and interpretations do not apply to the internal matters of a tribe. Application of external law would destroy the unique traditional, cultural, and community attributes of tribal communities. Application of external law would destroy the diversity that exists among the many tribal communities themselves. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

#### **§ 17.02**      Application of State Statutory Law as a Gap Filler

Grand Traverse Band Tribal Council Resolution No. 85-363 adopted the laws, codes, ordinances and other instruments of the law of the State of Michigan to the extent that they do not conflict with tribal law or applicable federal law. *People v. Chippewa*, No. 91-06-026-CR (Grand Traverse Band Tribal Court, Aug. 7, 1991); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

Use of State law to fill voids or gaps in enacted tribal statutory law does not infringe upon tribal self-determination or self-government as long as such use is not

intended to be permanent. *People v. Chippewa*, No. 91-06-026-CR (Grand Traverse Band Tribal Court, Aug. 7, 1991).

**§ 17.03**        Limits to the Application of State Law as a Gap Filler

Tribal Council Resolution No. 85-363 does not operate to mandate the tribal courts to follow state court rules. *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Aug. 31, 1996).

Tribal courts are not required to follow Michigan sentencing rules. *People v. Anderson*, No.00-06-310-CR-APP (Grand Traverse Band Court of Appeals, Aug. 22, 2001).

**§ 17.04**        Michigan Child Custody Act

Tribal court will apply, in absence of tribal law, the Michigan Child Custody Act in order to determine whether grandparent visitation is in the best interest of the child. *In the Matter of D. D.*, No. 97-11-083-CV-DR (Grand Traverse Band Tribal Court, February 1, 1998).

**§ 17.05**        Michigan Election Laws

Where the Band has not adopted statutes that govern election disputes, it is proper for the tribal court to apply Michigan law as a gap-filler. 14 GRAND TRAVERSE BAND CODE chap. 6; *Russell v. Grand Traverse Band of Ottawa and Chippewa Indians Election Board*, No. 00-03-108-CV (Grand Traverse Band Tribal Court, May 8, 2000).

**§ 17.06**        Enforcement of State Court Orders and Judgments

The tribal courts will not enforce an order issued by a state court where the state court has no jurisdiction over the underlying subject matter. *In the Matter of Case*, No. 96-01-001-CV-PC (Grand Traverse Band Tribal Court, May 21, 1996).

Judgments funds distributed from the Indian Claims Commission proceeds obtained in P.L. 105-143 may be attached or garnished to satisfy state court judgments. GRAND TRAVERSE BAND TRIBAL COURT RULES Chap. 10; MICHIGAN COURT RULE 2.615; *In the Matter of Raphael*, No. 97-12-141-FJ-LC (Grand Traverse Band Tribal Court, February 23, 1998).

Tribal Court Rule 10.101 et seq. authorizes the Tribal Court to domesticate and enforce the judgments of Michigan state courts and other tribal courts as a matter of comity. GRAND TRAVERSE BAND TRIBAL COURT RULES ch. 10; MICHIGAN COURT RULE 2.615; *Williams v. Martell*, No. 95-11-146-CV-FJ (Grand Traverse Band Tribal Court, May 22, 1998), *aff'd*, *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999).

**§ 17.07**        Full Faith and Credit to Federal Orders and Judgments

**§ 17.07[A]**     Bankruptcy

The tribal court will give full faith and credit to the judgments of federal bankruptcy courts. *In re Parnamc*, No. 12-707-CV (Grand Traverse Band Tribal Court, December 21, 2000).

**§ 18**     **Statutory Construction**

**§ 18.01**     Interpreting the Constitution

*See Constitutional Law*

**§ 18.02**     Interpreting Tribal Statutory Law

The tribal government's ordinances are based on the well-being of the tribe as a group. The Tribal Council continued its tradition of simple fairness after the enactment of the tribal constitution in 1988. The tribal courts interpret tribal laws with the goals of simple fairness and the promotion of tribal traditions in mind. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

**§ 18.03**     Plain Meaning Rule

The tribal courts will not interpret tribal statutes unless they are ambiguous. *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999).

**§ 18.04**     Every Word Has Meaning

Tribal statutes must be construed to give effect and meaning to every provision. *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999).

**§ 19**     **Torts**

**§ 19.01**     Trespass

Where a person has no property interest in a parcel of property, he cannot assert that another has trespassed on that land. *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff'd*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

**§ 19.02**     Libel

Tribal court is proper forum to determine whether discharge of employee constituted libel. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians*

*Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

**§ 19.03**      Tortious Interference with Contract

Tribal court is proper forum to determine whether discharge of employee constituted tortious interference with contract. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

**§ 19.04**      Intentional Torts

Contract right to repossess tribal member fishing boat cannot give rise to intentional tort action. *Winstone v. Old Kent Bank—Grand Traverse*, No. 98-04-127-CV (Grand Traverse Band Tribal Court, February 11, 2000).

**§ 20 Tribal Council**

**§ 20.01**      Ethical Obligations of Tribal Council Members

The tribal community has every right to expect that tribal officials and employees will avoid conflicts of interest. Tribal employees have a right to loyal service and fulfillment of confidence placed in officials and employees. GRAND TRAVERSE BAND CONST. art. XII, § 1 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

Tribal officials have a fiduciary responsibility to tribal membership. Good government will require that even the appearance of a conflict of interest be avoided. GRAND TRAVERSE BAND CONST. art. XII, § 1 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

**§ 20.02**      Removal of Tribal Council Member

Removal of a Tribal Council Member is a matter of utmost importance to the tribe. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

Where the tribal court finds grounds for removal of a Tribal Council Member from office as alleged by the Tribal Council, it must order the removal of the Member. GRAND TRAVERSE BAND CONST. art. VIII, § 2(f) (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

Tribal Council Members with minority positions within the Council should have protections in a system of checks and balances from a tyranny by Council majority. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

**§ 20.02[A]**

Conflict of Interest/Personal Financial Interest

Tribal Council Members may be removed from office for participating in making decisions involving balancing a personal financial interest, other than interests held in common with all other tribal members, against the best interests of the tribe. GRAND TRAVERSE BAND CONST. art. XII, § 1 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

The mere fact a personal interest is involved is sufficient to create a conflict of interest. GRAND TRAVERSE BAND CONST. art. XII, § 1 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

The constitution's conflict of interest provision in Article XII, Section 1 does not mandate a "balancing test" by the tribal court as decisionmaker. GRAND TRAVERSE BAND CONST. art. XII, § 1 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

Where a Tribal Council Member, with personal financial interests at stake, influences the decision of the Tribal Council by discussing an issue with some or all Tribal Council Members; presents plans, budgets, and marketing analyses to some or all Tribal Council Members; prepares and presents a Tribal Council voting form to the Chairman's office; presents the polling form to a Tribal Council Member at another official function; meets with a Tribal Council Member about to leave town in order to influence a vote; submits a polling form to the accounting department for the preparation of a check request; delivers a signed check request to the Chairman's office for signature; returns the signed check request to the accounting department; signs the check issued by the accounting department to purchase land in which the Member has an interest; and delivers the signed check to the title company's closing officer, the Member has engaged in actions violating Article XII, Section 1. GRAND TRAVERSE BAND CONST. art. XII, § 1 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

**§ 20.02[B]**

Appointment of Counsel

Appointment of counsel in a matter of utmost importance to the tribe is required where a party in interest is unable to focus cleanly on the issues; where the tribal court would be forced to be proactively involved in guiding the case through the judicial process and guiding the party to ensure fairness and due process; and where the decisionmaker's role would be compromised and would create the appearance of bias. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

Removal of a Tribal Council Member is a matter of utmost importance to the tribe. Fully developed facts and legal arguments are important to the tribal court in such matters. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

Tribal Council Members with minority positions within the Council should have protections in a system of checks and balances from a tyranny by Council majority. The Tribal Council will be represented by tribal attorney staff using tribal resources, so tribal resources should also be used to balance the check against minority reprisals against minority office holders. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

**§ 20.02[C]**     Attorney Fees

In a case for removal of a Tribal Council Member, the tribe will pay attorney fees for the respondent Council Member, regardless of indigent status. The Tribal Council will be represented by tribal attorney staff using tribal resources, so tribal resources should also be used to balance the check against minority reprisals against minority office holders. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

The Tribal Judiciary rejects the so-called “American Rule” as applied to Tribal Council Member removal actions. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

**§ 21**     **Tribal Courts**

**§ 21.01**     Judicial Independence

The tribal membership delegated the judicial power to the tribal courts through the adoption of the tribal constitution. GRAND TRAVERSE BAND CONST. art. V, § 1 (1988); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff’d*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

The Tribal Judiciary’s authority is not limited to that which the Tribal Council may see fit to delegate to the courts. The judiciary is independent of the political branches of the tribal government. GRAND TRAVERSE BAND CONST. art. V, § 6 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff’d*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999).

**§ 21.02**     Tribal Court

The tribal court is one of general jurisdiction. A court of general jurisdiction is one that has the inherent power to do whatever is reasonably necessary to fairly resolve matters before it. GRAND TRAVERSE BAND CONST. art. V, § 3(a) (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc); *Raphael v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 90-01-001-CV (Grand Traverse Band Tribal Court, April 16, 1996), *aff’d*, No. 90-01-CV (Grand Traverse Band Court of Appeals, Oct. 15, 1999); *Koon v. Grand Traverse Band*

*of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

The tribal court is the proper forum for determining in the first instance whether tribe properly terminated tribal economic development enterprises employee; to fairly and properly interpret employment contract; to review evidence; to fashion damages or declaratory relief as it determines to be proper. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

The constitution mandates that the judicial power must be exercised to the fullest extent consistent with self-determination and the sovereign powers of the tribe. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc); *Koon v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-067-048-CV (Grand Traverse Band Tribal Court, Feb. 3, 1998).

**§ 21.02**        Tribal Judiciary Sitting *En Banc*

In issues of critical importance to the tribe, the members of the Tribal Judiciary may sit *en banc* to resolve the issues as a matter of original jurisdiction. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

There is no right to appeal a decision made by the Tribal Judiciary sitting *en banc*. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

**§ 21.03**        Jurisdiction

Events that involve tribal members but occur off the reservation do not create jurisdiction in the tribal courts. *Winstone v. Old Kent Bank—Grand Traverse*, No. 98-04-127-CV (Grand Traverse Band Tribal Court, February 11, 2000).

**§ 21.04**        Civil Procedure

**§ 21.04[A]**     Temporary Adoption of Michigan Court Rules

The Grand Traverse Band Tribal Court has adopted the Michigan Court Rules on an interim basis. *Williams v. Martell*, [no docket number available] (Grand Traverse Band Court of Appeals, July 19, 1999); *Anderson v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-03-114-CV (Grand Traverse Band Tribal Court, July 10, 2000); *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

**§ 21.04[B]**     Liberal Interpretation of Complaints



The Band's traditions allow liberal interpretation of complaints. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001.

**§ 21.04[C]**     Notice/Service of Notice

Every effort should be made to provide notice where possible and to comport with due process, with the level of effort rising with the amount of harm or loss of rights that the person would suffer. *De Young v. Southbird*, No. 99-11-568-CV-SC (Grand Traverse Band Court of Appeals, March 6, 2001).

Objections to lack of notice may be waived and due process complied with. *De Young v. Southbird*, No. 99-11-568-CV-SC (Grand Traverse Band Court of Appeals, March 6, 2001).

**§ 21.04[D]**     Injunctive Relief

Motions for injunctive relief must be proceeded or accompanied by a formal complaint. *Grand Traverse Band of Ottawa and Chippewa Indians v. Grand Traverse Band Housing Entity*, No. 98-07-238-CV (Grand Traverse Band Tribal Court, August 14, 1998).

**§ 21.04[E]**     Summary Disposition

The tribal court will review the pleadings where a defendant makes a motion for summary disposition on the basis that the plaintiff has failed to state a claim on which relief can be granted. *TwoCrow v. Grand Traverse Band Economic Development Authority*, No. 94-07-003-CV (Grand Traverse Band Tribal Court, April 15, 1996).

The tribal court will deny a motion for summary disposition on the basis that the plaintiff has failed to state a claim on which relief can be granted where a plaintiff has alleged facts that might constitute a claim. *TwoCrow v. Grand Traverse Band Economic Development Authority*, No. 94-07-003-CV (Grand Traverse Band Tribal Court, April 15, 1996); *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

The standard for determining whether to grant a motion for summary judgment is that there is no issue of material fact and that the moving party is entitled to judgment as a matter of law. *Sliger v. Stalmack*, No. 99-10-490-CV (Grand Traverse Band Tribal Court, December 8, 1999), *withdrawn on motion for reconsideration on other grounds*, February 14, 2000; *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004).

One basis for summary disposition is the lack of jurisdiction in the tribal court. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004)

The party alleging jurisdiction bears the burden of establishing jurisdiction sufficient to defeat a motion for summary disposition. *Fletcher v. Grand Traverse Band Tribal Council*, No. 03-05-448-CV (Grand Traverse Band Jan. 8, 2004)

A delay in filing a motion to dismiss on the pleadings is waived if the plaintiff does not complain of a late filing and suffers no prejudice. *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

**§ 21.04[F]**     Cross-Motions for Summary Disposition

Where the parties stipulate that there are no issues of material fact, the court can make a decision on the pleadings as a matter of law. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

**§ 21.04[G]**     Discovery

A protective order halting discovery may issue from the tribal court when a party proves that discovery requests create an undue burden or expense. *Anderson v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-03-114-CV (Grand Traverse Band Tribal Court, July 10, 2000).

The tribal court finds that an undue burden and expense for the Band to comply with discovery requests while a motion for summary disposition is pending. *Anderson v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 00-03-114-CV (Grand Traverse Band Tribal Court, July 10, 2000).

**§ 21.04[H]**     Default Judgment

Obtaining a default is a prerequisite to obtaining a default judgment. *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

Failure to file a responsive pleading to a complaint within 21 days as required by court rule does not create a default where the plaintiff does not object. *Yannett v. Grand Traverse Band Economic Development Authority, Inc.*, No. 93-02-004-CV (Grand Traverse Band Tribal Court, Jan. 22, 2005).

**§ 21.04[I]**     Small Claims Court

Tribal court procedures allow a waiver of personal service in Small Claims actions but require some written notice or a waiver of notice at a hearing on the merits. *De Young v. Southbird*, No. 99-11-568-CV-SC (Grand Traverse Band Court of Appeals, March 6, 2001).

Every effort should be made to provide notice where possible and to comport with due process, with the level of effort rising with the amount of harm or loss of rights that

the person would suffer. *De Young v. Southbird*, No. 99-11-568-CV-SC (Grand Traverse Band Court of Appeals, March 6, 2001).

**§ 21.05**      Appeals

**§ 21.05[A]**    Time for Filing Appeal

The tribal court may limit the amount of time allowed for a party to file an appeal where undue delay would pose financial risk to the tribe. *Tribal Members Advocacy Group v. Tribal Council of the Grand Traverse Band of Ottawa and Chippewa Indians*, No. 95-03-008 (Grand Traverse Band Tribal Court, April 13, 1995).

The court of appeals has discretionary authority to allow late appeals. *In re C.*, [docket number not available], (Grand Traverse Band Court of Appeals, March 12, 1999); *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, August 27, 2001).

**§ 21.05[B]**    Appellate Jurisdiction

The Grand Traverse Band appellate court has jurisdiction to hear appeals from a full and final determination by the tribal court, such as a denial of a motion for summary disposition. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

A contract containing a forum selection clause that requires all disputes to be resolved in “tribal court” does not derive the appellate court of jurisdiction to hear an appeal of the tribal court’s decision. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

There is no right to appeal a decision made by the Tribal Judiciary sitting *en banc*. *In re Referral of McSauby*, No. 97-02-001-CV-JR (Grand Traverse Band Tribal Court, July 29, 1997) (en banc).

**§ 21.05[C]**    Remand

Appellate court will remand undecided issues of fact and law back to the tribal court for decision in the first instance. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

**§ 21.06**      Justiciability – Case or Controversy Requirement

A “case” can only exist when there is a controversy between adverse parties that requires a declaration of the parties’ rights. This requirement is satisfied when a suit is brought in pursuance of an honest or actual antagonistic assertion of rights by one party against another, and valuable legal rights will be directly affected to a specific and substantial degree by the tribal court’s decision. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

A mere disagreement, no matter how sharp and acrimonious it may be, is insufficient by itself to meet the case and controversy requirement. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

The case or controversy requirement ensures that the tribal court will not hear just one perspective and one set of arguments in making decisions that have great importance. It is critical to the judicial process and the development of good law for the tribal court to receive sufficient information and argument in order to make fully informed decisions. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

The case or controversy requirement ensures the ripeness and timeliness of the suit. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

The case or controversy requirement ensures that judicial resources are conserved to be used in justiciable cases. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

A request for an advisory opinion does not meet the case or controversy requirement. GRAND TRAVERSE BAND CONST. art. V, § 2 (1988); *In the matter of Russell*, No. 96-03-025-CV (Grand Traverse Band Tribal Court, April 2, 1996).

## **§ 22 Tribal Economic Development**

### **§ 22.01 Tribal Economic Development Enterprises**

Tribal and federal law consistently establishes a strong rule that the tribe must be left to handle its own actions involving economic development. GRAND TRAVERSE BAND CONST. art. VI, §§ 1(a), (c), (d), (e), (h), (i), (j), (m), (n), 2, and 3; *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff’d*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Through Grand Traverse Band Resolution No. 84-193, enacted in 1984, the interim tribal council established the Economic Development Authority in order to engage in business activities that would benefit the tribal community. *Adams v. Grand*

*Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Suits against tribal economic development enterprises chartered by the tribe should be kept separate and distinguished from suits brought against the tribe itself. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Unlike the tribe, the tribe's business enterprises, depending on business reality, may be forced to be in a position to provide assurances that there will be an opportunity for redress if business relations go awry. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

#### **§ 22.02**      Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority

The Economic Development Authority is a proprietary, subordinate organization of the tribe. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

The Economic Development Authority was not a federal corporation chartered in accordance with Section 17 of the Indian Reorganization Act. 25 U.S.C. § 477; GRAND TRAVERSE BAND CONST. art. IV, § 1 (1988); *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

The Economic Development Authority is separate from tribal government to facilitate effective capacity to function in the business world and to prevent interference by tribal political considerations. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff'd*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh'g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

**§ 22.03**      Sovereign Immunity and the Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority

The interim Tribal Council intended the Economic Development Authority to be capable of waiving its immunity by incorporating a “sue and be sued” clause in the Authority’s bylaws. The “sue and be sued” clause operates only to authorize the Authority to waive its immunity. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff’d*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Economic Development Authority waived its immunity from suit by entering into an employment contract that contained a choice of forum clause reading, “[D]isputes under this Employment Contract shall be resolved by ... the Grand Traverse Band Tribal Court.” *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Tribal Court, June 18, 1992), *aff’d*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

A waiver of sovereign immunity by the Economic Development Authority was a narrow waiver that did not implicate the assets of the tribe, but only the assets of the Authority. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Waiver by the Economic Development Authority to suit in accordance with a “sue and be sued” clause was sufficient to waive immunity only in the tribal court, not in state or federal courts. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

Withdrawal of waiver of sovereign immunity by Economic Development Authority or Tribal Council did not operate to deprive tribal court of subject matter jurisdiction over cases arising during effective dates of waiver. *Adams v. Grand Traverse Band of Ottawa and Chippewa Indians Economic Development Authority*, No. 89-03-001-CV (Grand Traverse Band Court of Appeals, Aug. 19, 1993), *amended on petition for reh’g*, No. 92-07-002-CV-App (Grand Traverse Band Court of Appeals, March 28, 1994).

**§ 22.04**      Tribally Owned Businesses

Leelanau Sands Casino retains the sovereign immunity of the Band, absent a waiver effectuated in accordance with the Constitution. *D.F. Novak Construction Co.*,

*Inc. v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 98-09-321-CV (Grand Traverse Band Tribal Court, June 26, 2000), *aff'd*, No. 00-09-423-APP (Grand Traverse Band Court of Appeals, November 26, 2001); *Turner v. Leelanau Sands Casino*, No. 99-11-562-CV (Grand Traverse Band Tribal Court, July 12, 2000).

## **§ 23 Tribal Membership**

Tribal membership requires formal enrollment in the Band. *Shomin v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 92-05-002-CV (Grand Traverse Band Tribal Court, July 7, 2000).

### **§ 23.01 Tribal Authority to Decide Membership**

Indian tribes have undisputed right and obligation to determine membership criteria, as recognized in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 (Grand Traverse Band Tribal Court, December 21, 1999), *aff'd in part*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001; *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

### **§ 23.02 Tribal Court Authority**

Under Article V, section 2, and Article II of the Constitution, the tribal courts have jurisdiction to review membership decisions. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 (Grand Traverse Band Tribal Court, December 21, 1999), *aff'd in part*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001; *In re M.*, No. 97-12-092-CV (Grand Traverse Band Court of Appeals, February 11, 2000).

The Tribal Court has authority to interpret the Constitutional provisions related to tribal membership. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

The Constitution reserves membership decisions to the Tribal Certifier. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, August 27, 2001).

### **§ 23.03 Standard of Review**

The Tribal Court will not reverse the decision of the Tribal Council to deny membership unless the decision is arbitrary and capricious or outside the scope of the Council's duties. *Bailey v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 99-08-299-CV (Grand Traverse Band Tribal Court, November 8, 1999).

### **§ 23.04 Dual Citizenship**

Dual citizenship – membership of one person in more than one American Indian tribe or Canadian First Nation – is anomalous. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, February 22, 1999).

The Constitutional term that prohibits dual enrollment in more than one “federally-recognized Indian Tribe, Band, or Group” does not include Canadian First Nations. CONST. art. II, § 2; *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

A person subject to disenrollment by the Tribal Council is entitled to due process in accordance with Article II, section 1 of the Constitution. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 (Grand Traverse Band Tribal Court, December 21, 1999), *aff’d in part*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001.

#### **§ 23.05**      Blood Quantum

Prior to the adoption of the Constitution, the Secretary of Interior had authority to approve or disapprove the Constitution. 25 U.S.C. § 476(a)(2); *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

The court cannot ignore the history of the framing of the Constitution in relation to blood quantum. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

The framers understood that the Secretary of Interior would disapprove blood quantum criteria that took into account Canadian Indian blood because Canadian Indian blood is uncertifiable. CONST. art. II, § 1(b)(2)(a); *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, May 5, 2004).

#### **§ 23.06**      Property Right

Membership is a fundamental property right that cannot be taken without due process of law. *DeVerney v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 (Grand Traverse Band Tribal Court, December 21, 1999), *aff’d in part*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001.

#### **§ 23.07**      Political Question

Tribal membership decisions are political questions answerable only by the Tribal Council. *In re M.*, No. 97-12-092-CV (Grand Traverse Band Tribal Court, February 22, 1999), *rev’d*, No. 97-12-092-CV (Grand Traverse Band Court of Appeals, February 11, 2000).

Tribal membership decisions are not political questions answerable only by the Tribal Council, applying the principles of *Baker v. Carr*, 369 U.S. 186 (1962). *DeVerney*



*v. Grand Traverse Band of Ottawa and Chippewa Indians*, No. 96-10-201 (Grand Traverse Band Tribal Court, December 21, 1999), *aff'd in part*, No. 96-10-201 CV (Grand Traverse Band Court of Appeals, November 15, 2000), *modified*, February 7, 2001, *modified*, August 27, 2001.

**§ 23.08**      Tribal Membership Records

The Band has a duty to protect the confidentiality of information contained in its tribal membership records. *In re M.*, No. 97-12-092 (Grand Traverse Band Tribal Court, October 10, 2000).

Even during litigation, the tribal court will apply a “high standard” before allowing membership litigants to access tribal membership records via subpoena. *In re M.*, No. 97-12-092 (Grand Traverse Band Tribal Court, October 10, 2000).

**Appendix – Law Review & Journal Articles**

James A. Bransky, *The Political Status of Indian Tribes in Michigan*, 65 MICH. B. J. 444 (1986)

Kirsten Matoy Carlson, *Towards Tribal Sovereignty and Judicial Efficiency: Ordering the Defenses of Tribal Sovereign Immunity and Exhaustion of Tribal Remedies*, 101 MICH. L. REV. 569 (2003)

Hon. Michael F. Cavanaugh, *Michigan’s Story: State and Tribal Courts Try to Do the Right Thing*, 76 U. DET. MERCY L. REV. 709 (1999)

Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401 (2001)

Nancy A. Costello, *Walking Together in a Good Way: Indian Peacemaker Courts in Michigan*, 76 U. DET. MERCY L. REV. 875 (1999)

Matthew L.M. Fletcher, *Reviving Local Tribal Control in Indian Country*, 53 FED. LAW., March/April 2006, at 38

Matthew L.M. Fletcher, *Toward a Theory of Intertribal and Intratribal Common Law*, 43 HOUS. L. REV. 701 (2006)

Matthew L.M. Fletcher, *Same-Sex Marriage, Indian Tribes, and the Constitution*, 61 U. MIAMI L. REV. 53 (2006)

Matthew L.M. Fletcher, *Politics, History, and Semantics: The Federal Recognition of Indian Tribes*, 82 N.D. L. REV. 487 (2006)

Matthew L.M. Fletcher, *The Insidious Colonialism of the Conqueror: The Federal Government in Modern Tribal Affairs*, 19 WASH. U. J. L. & POL'Y 273 (2005)

Matthew L.M. Fletcher, *Theoretical Restrictions on the Sharing of Indigenous Biological Knowledge: Implications for Freedom of Speech in Tribal Law*, 14 KAN. J. L. PUB. POL'Y 525 (2005)

Matthew L.M. Fletcher, *Tribal Employment Separation: Tribal Law Enigma, Tribal Governance Paradox, and Tribal Court Conundrum*, 38 U. MICH. J. L. REFORM 273 (2005)

Matthew L.M. Fletcher, *United States v. Lara: Affirmation of Tribal Criminal Jurisdiction over Nonmember Indians*, 83 MICH. B. J., July 2004, at 24

Matthew L.M. Fletcher, *The Power to Tax, the Power to Destroy, and the Michigan Tribal-State Tax Agreements*, 82 U. DET. MERCY L. REV. 1 (2004)

Matthew L.M. Fletcher, *The Drug War on Tribal Government Employees: Adopting the Ways of the Conqueror*, 35 COLUM. HUM. RTS. L. REV. 1 (2003)

Matthew L.M. Fletcher & Wenona T. Singel, *Power, Authority, and Tribal Property*, 41 TULSA L. REV. 21 (2005)

L. Scott Gould, *Mixing Bodies and Beliefs: The Predicament of Tribes*, 101 COLUM. L. REV. 702 (2001)

Steven C. Gunn, *Compacts, Confederacies, and Comity: Intertribal Enforcement of Tribal Court Orders*, 34 N.M. L. REV. 297 (2004)

David D. Haddock & Robert J. Miller, *Can a Sovereign Protect Investors from Itself? Tribal Institutions to Spur Reservation Investment*, 8 J. SMALL & EMERGING BUS. L. 173 (2004)

Scott C. Idleman, *Multiculturalism and the Future of Tribal Sovereignty*, 35 COLUM. L. REV. 589 (2004)

Mark A. Jarboe, *Fundamental Legal Principles Affecting Business Transactions in Indian Country*, 17 HAMLINE L. REV. 417 (1994)

John F. Petoskey, *Doing Business with Michigan Indian Tribes*, 76 MICH. B. J. 440 (1997)

Michael D. Petoskey, *Tribal Courts*, 67 MICH. B. J. 366 (1988)

Angela R. Riley, *"Straight Stealing": Toward an Indigenous System of Cultural Property Protection*, 80 WASH. L. REV. 69 (2005)

Ezra Rosser, *Rural Housing and Code Enforcement: Navigating Between Values and Housing Types*, 13 GEO. L. POVERTY L. & POL'Y 33 (2006)

Wenona T. Singel, *Labor Relations and Tribal Self-Governance*, 80 N.D. L. REV. 691 (2004)

Gloria Valenica-Weber, *Tribal Courts: Custom and Innovative Law*, 24 N.M. L. REV. 225 (1994)