WAGANAKISING ODAWAK STATUTE 2001-10
REMOVAL OF COMMISSIONERS AND NEPOTISM

SECTION I: SHORT TITLE AND PURPOSE

A. Short Title. This Statute may be cited as the "Commissioner Removal and Nepotism Act."

B. Purpose. This Act sets out standard procedures for the removal of members of commissions of the Tribe, and rules regarding nepotism. This Act shall apply to all commissions of the Tribe unless otherwise specified in a specific commission statute. This Statute repeals and replaces the Removal of Commissioners and Nepotism Statute enacted on April 20, 1997 (Waganakising Odawak Statute 1997005).

SECTION II: REMOVAL OF COMMISSIONERS

A. Hearing Board. Hearings held under this section shall be before a Hearing Board consisting of one member of the Tribal Judiciary to be selected by the Judiciary itself, and two Tribal members at large to be selected by the Tribal Judiciary. All members of the Hearing Board shall be subject to the same rules regarding recusal as would a judge hearing a Tribal Court case.

B. Removal or Discipline. Members of a commission appointed by the Tribal Council shall not be removed during their terms of office except for misconduct, neglect of duties, or defying legally issued directives of the Tribal Council. The procedure for removal shall be as follows:

1. The Chairman of the Little Traverse Bay Bands of Odawa Indians shall call a special meeting of the Tribal Council to deal with a request to remove the member or place the item on the agenda of the next regularly scheduled Council meeting in response to any one of the following:

a. The Tribal Council by majority vote determines that there is cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

b. The Tribal Council receives a petition signed by at least fifty (50) members of the Little Traverse Bay Bands of Odawa Indians alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section;

c. The Tribal Council receives a petition signed by a majority of the commissioners sitting on the commission at issue alleging cause to suspect that a member may be subject to removal for one or more of the reasons specified in this section.

2. In the event that the Tribal Council receives a petition under this section, or determines itself that there may be grounds for removal the Council shall:

a. Submit the petition to the Election Board for verification that the petition contains a sufficient number of valid signatures;

b. If the Election Board finds the petition to contain a sufficient number of valid signatures, the Tribal Council shall submit the petition to the Hearing Board to determine if the charges, if proven true, would constitute grounds for removal;

c. In the event that Council itself has determined that there is cause to suspect that a member may be subject to removal, Council shall submit its reasons in writing to the Hearing Board to determine if the charges, if proven true, would constitute grounds for removal.

d. If the Hearing Board determines that the charges, if proven true, would constitute grounds for removal of a commissioner from his or her appointed position, the Hearing Board shall set a date for hearing the charges on the petition and shall provide notice to the member whose removal is being sought.

3. Notice to the member whose removal is being sought shall be served no later than two (2) weeks prior to the date set for the hearing, shall include the date, time and location of the hearing, shall attach a full and complete copy of a statement of the Tribal Council or the petition seeking removal, and shall attach a copy of the rules to be followed during the hearing. Upon good cause shown, the Hearing Board may postpone the hearing to a later date. Notice shall also advise the recipient of his/her right to bring witnesses or documents to the hearing that the recipient deems necessary in order to attempt to defend against the charges contained in the petition, and the right of the commissioner to have one attorney or Tribal member advocate present to represent and assist the commissioner at the hearing.

4. The Hearing Board shall also provide copies of the notice to the other members of the commission from which removal is sought, to the member of the Little Traverse Bay Bands of Odawa Indians who presented the petition, and to the members of the Tribal Council advising each of them of the opportunity to appear and to present evidence, either in support of the charges against the member of the commissioner whose removal is sought or in support of the defense of such member.

5. The Hearing Board shall preside at the hearing of the charges contained in any such petition and shall allow as much time as necessary for the testimony of witnesses and presentation of evidence in support of the charges, as much time as necessary for the testimony of witnesses and presentation of evidence to refute the charges, and such time as the Hearing Board deems appropriate for summary statements and arguments. At any time, the Hearing Board may recess the hearing until a later time certain. At the request

of the member whose removal is at issue, the hearing may be held in closed session. The Hearing Board also may elect to receive in closed session any evidence public disclosure of which might compromise the proprietary interests of the Tribe or any on-going law-enforcement investigation.

6. Upon the conclusion of the presentation of evidence and of summary statements and arguments, the Hearing Board shall deliberate in closed session and shall either dismiss the petition, remove the member charged in the petition from the commission, or take such other disciplinary action as it deems appropriate short of removal, upon such findings of fact as may be appropriate. The decision of the Hearing Board shall be final, and no appeal to any other tribunal shall be available.

7. Upon conclusion of the hearing, any information disclosing possible criminal activity shall be promptly reported to Tribal Law Enforcement.

SECTION III: NEPOTISM AND CONFLICT OF INTEREST

A. Two or more members of the same immediate family shall not serve on the same commission at the same time. For purposes of this section immediate family means husband, wife, son, daughter, step-son, step-daughter, father, step-father, father-in-law, mother, step-mother, mother-in-law, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, child, step-child.

B. No commission member may participate in making any decision that involves a personal or financial interest of the commissioner or a member of his or her immediate family unless such interest is held in common with the Tribe and its members.

SECTION IV: SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, or laws of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

Certification

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Statute was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on July 22, 2001 at which a quorum was present, by a vote of 5 in favor, 2 opposed, 0 abstentions, and 0 absent as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
George Anthony	X			
Gerald Chingwa	X			
Fred Harrington	X			
Rita Shananaquet		X		
Janet Shomin		X		
Susan Wysocki	X			
Alice Yellowbank	X			

Date: 7-22-01

Gerald Chingwa, Tribal Chairman

Susan Wysocki, Tribal Secretary