

JUN- 6-01 WED 1:06 PM MICHAEL PETOSKEY

|                   |             |         |              |            |   |
|-------------------|-------------|---------|--------------|------------|---|
| Post-It* Fax Note | 7871        | Date    | 6/6/01       | # of pages | 2 |
| To                | Tim LaCroix | From    | David M. ... |            |   |
| Co./Dept.         |             | Co.     |              |            |   |
| Phone #           |             | Phone # |              |            |   |
| Fax #             | 4395578     | Fax #   |              |            |   |

LITTLE TRAVERSE BAY B

### HEARING BOARD

In the Matter of Removal Petition Filed Against  
Tribal Chairperson Gerald V. Chingwa

### *DECISION REGARDING PETITIONER'S MOTION TO REVERSE AND REFER TO AN OUTSIDE ENTITY FOR REHEARING*

The Hearing Board received a letter, dated May 18, 2001, from Mr. Tim LaCroix, the Presenter of the above-referenced Removal Petition. The letter requests that this Hearing Board reverse its May 15, 2001 decision. The basis of the request is that the Board's decision was issued one (1) day after the sixty (60) day time frame provided by the Tribal Constitution & Bylaws for the Hearing Board to conduct a hearing and reach its decision.

#### CONSIDERATION BY THE HEARING BOARD:

It does appear that there may have been a miscalculation of the time frames involved in the instant matter. However, the Presenter has not demonstrated any harm resulting from the one (1) day delay, but to give the Presenter the benefit of any doubt the Board itself considered whether any harm has occurred. It finds none. Therefore, if error has occurred, it is harmless error.

The sole purpose of mandated time frames for removal actions is to ensure fairness for both parties by requiring timely consideration of actions before the Board. The requirement is to prevent an undue delay of justice. The Hearing Board concedes that its decisions should be issued in compliance with tribal constitutional requirements, however this matter involved the following extraordinary circumstances: (1) an interruption in the running of time; (2) the conduct of an extra hearing by the Hearing Board regarding Presenter's request for reconsideration of an earlier decision to dismiss and issuance of a separate decision in the reconsideration action; (3) this Removal Petition involved ten (10) separate charges for individual consideration by the Hearing Board; and (4) considerations of fairness required transcript preparation of witness testimony from an earlier removal hearing. In fact, the Hearing Board's decision was issued a mere two (2) full business days after that transcript was delivered to individual Hearing Board

Received Jun-06-01 01:37pm  
06/06/2001 12:47 6164393885

from 6164393885 → LTBB COMPLIANCE  
LTBB TRIBAL COURT

page 2  
PAGE 02  
P. 2

JUN- 6-01 WED 1:07 PM MICHAEL PETOSKEY

FAX NO. 2319473204

members for consideration with all of the other testimony and evidence. Under the unique circumstances surrounding this particular removal action, the Presenter has not shown undue delay of justice.

Referral of this action to any entity outside of this Tribe would violate the precepts of tribal sovereignty and self-determination. Tribal self-government is only truly self-government if internal tribal matters are resolved within the Tribe itself. Furthermore, the Tribal Constitution mandates that the decision of the Hearing Board shall be final. *See Constitution and By-Laws of the Little Travers Bay Bands of Odawa Indians, Article VI, Section 4(b).*

**FOR ALL OF THE FOREGOING, THIS HEARING BOARD DENIES  
PETITIONER'S MOTION TO REVERSE AND REFER TO AN OUTSIDE ENTITY FOR  
REHEARING.**

6/6/01  
DATE

Michael Petoskey  
Hearing Board Chairman  
For a Unanimous Hearing Board

06-06-01P01:11 FILE

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS  
HEARING BOARD**

**ORDER**

In The Matter Of A Removal Petition Filed Against Tribal Chairperson Gerald V. Chingwa:

**WHEREAS** the matter of a petition for removal is an important matter that requires strict application and proper procedures to ensure the integrity of a petition. All information should be placed on the face of the petition, i.e., the number of pages attached, a description of the basis and nature of the petition, and supporting facts.

**WHEREAS** the integrity of the petition must be protected from fraud, mishandling, and improper circulation. The petition and the process of circulating the petition must conform to high standards, this dictates that the person signing the petition is fully aware of what they are signing, and it protects the signer and the Respondent from acts of fraud or deceit.

**WHEREAS** the LTBB has no written policy or procedures to ensure the integrity of a petition. The adopted *LTBB Petition Form* gives neither gives instruction nor asks for specific information to be contained within the form, nor gives ample space to include the proper information. The lack of having policy or procedures put the tribal membership at a disadvantage of attempted to follow a correct procedure that is not delineated either in the Constitution, By-laws, Statute nor ordinance.

**WHEREAS** after considerable testimony the Hearing Board found that the signers of the petition were fully informed of the nature, basis and facts supporting the allegations.

**WHEREAS** after considerable testimony the Hearing Board is confident that no fraud or deceit occurred in the circulation and submission of the petition.

**WHEREFORE THE HEARING BOARD UNANIMOUSLY FINDS** that the petition for the removal of Tribal Chairperson, Gerald V. Chingwa, is valid.

**THEREFORE IT IS ORDERED** that a hearing will be conducted by the Hearing Board to determine whether the accused, Gerald V. Chingwa, shall be removed from office.

3/29/01  
DATE

Michael Petoskey  
Hearing Board Chairman  
For a Unanimous Hearing Board

03-29-01A10:47 RCVD

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS  
HEARING BOARD**

**DECISION**

In the Matter of Removal Petition Filed Against Tribal Chairperson Gerald V. Chingwa:

**Hearing Board Authority**

A petition was filed with the Little Traverse Bay Bands of Odawa Indians (LTBB) Tribal Council by Tim La Croix on January 19, 2001 for the removal of Chairperson Gerald V. Chingwa from the LTBB Tribal Council. After validation of the petition signatures, the Tribal Council, in accordance with the Constitution and By-laws of the Little Traverse Bay Bands of Odawa Indians, appointed a hearing board.

The Hearing Board's responsibility is to determine the validity of the allegations made by Petitioner La Croix and decide whether Chairman Chingwa shall be removed from office.

**Burden of Proof**

The burden of proof lies with the Petitioner. The Petitioner must prove that the allegations set forth in the petition are true by introducing evidence that clearly establishes the truth of his allegations. He must prove *"specific facts which, if shown to be true, would establish that the official has engaged in conduct which constitutes a violation of this Constitution and By-laws or any duly enacted ordinance or resolution of the Bands Board of Directors."*

Additionally, Petitioner carries the burden of persuasion regarding whether Chairman Chingwa ought to be removed from office for the alleged acts and omissions.

**Petition for Removal**

The section of the LTBB Constitution that applies to filing a petition for removal is Article VI, Section 3. This section provides for the constitutional basis and requirements of a petition.

*"Removal of Bands President or any member of the Board of Directors may be initiated by means of filing charges against such person with the Board of Directors in the form of a petition signed by at least fifty (50) eligible voters which alleges specific facts which, if shown to be true, would establish that the official has engaged in conduct which constitutes a violation of this Constitution and By-laws or any duly enacted ordinance or resolution of the Bands Board of Directors."*

The Petitioner submitted the following allegations:

"We, the members of the Little Traverse Bay Bands of Odawa Indians, hereby petition the Tribal Council to initiate the removal process of Gerald V. Chingwa, Chairman under Waganakising Odawak Tribal Constitution (WOTC), Article VI, Section 3. This petition for removal is based on violations of WOTC Articles II, IV, VII, and X for violations of Waganakising Odawak Tribal Ordinances Title VI, Chapter 5, sec. 6.502, 6.502A, and 6.502A6; Title VII, Chapter 4, Section 7.410D, Chapter 5, sec. 7.505A, 7.505B and 7.506; Title IX, Chapter 1, Section 9.107E3 and H3."

The LTBB Constitution requires specific facts be alleged in the Petition. The specific facts alleged are as follows:

"Violation One. During a Tribal Council meeting held in September, Chairman Chingwa submitted a Resolution seeking to become the Chief Executive Officer of the Tribal Administration in its day to day business which clearly is not within his powers under Article II, sec. 1 of the Constitution. We, the Petitioners feel that this is a conflict of interest and clearly not within his authority to change the Constitution or By-laws without a vote by the Tribal membership."

#### HEARING BOARD ANALYSIS AND REASONING:

Article II, section 1 of the LTBB Constitution reads as follows:

*"The chairperson shall preside over all meetings of the Bands Council, perform all duties consistent with the office as chief executive officer of the bands, and exercise any other lawful authority delegated the chairperson by the Bands Council . . . (emphasis added)"*

The LTBB Constitution, quoted above, clearly allows for the Chairperson to act as the Chief Executive Officer (CEO) of the Tribe. Proposed legislation submitted in September 2000, only proposed to further define the role of the CEO and allowed input from the Council members as to what the duties of the CEO would entail. In these early formation stages of the Tribe, there is a diversity of opinion on the authority of the Tribal Chairman's office vis-a-vis the Tribal Council. The appropriate relationships and roles should only be fine-tuned by proposed legislation, open public debate and fully-informed decision making. The Hearing Board finds no conflict of interest or that the Chairperson acted without authority by proposing legislation that would define his role as CEO as established by the LTBB Constitution and further finds that the Petitioner failed to meet the burden of proof in regard to this allegation.

"Violation Two. The Tribal Chairman held several "special meetings" for the removal of Gaming Administration Commissioner John Gasco using the same petition over and over again, despite the fact that Chairman Chingwa had already

ruled the petition to be invalid . . . We feel that being removed from the Commission is a serious matter and that it could reflect badly in our small community. Gaming Administrator Gasco had been continually brought before the Tribal Council on the same petition over and over again."

#### HEARING BOARD ANALYSIS AND REASONING:

The special hearings refereed to in this allegation were special hearings called by the Tribal Council as a whole. The Chairperson did not act independently from the Council by authorizing the special meetings for the removal of the Gaming Administration Commission John Gasco. Testimony presented by both Petitioner and Respondent clearly show that the meetings were voted on and set by the entire LTBB Tribal Council. Respondent admits in argument that the Tribal Council muddled its way through this removal process and that it wasn't pretty, but the entire Tribal Council's action is not an issue before this Board. The Hearing Board finds that the Petitioner has failed to meet the burden of proof in regard to this allegation.

"Violation Three. We also feel that Chairman Chingwa did not act in the best interest of the tribe, in direct conflict of his Constitutional responsibilities . . . in that he submitted several directives to Gaming Administration which he failed to follow through, which resulted in the removal of two Gaming Administration members. We feel that had Chairman Chingwa handled this more strongly in the beginning we would have been able to keep these individuals in their appointed positions."

#### HEARING BOARD ANALYSIS AND REASONING:

The testimony presented revealed that the Chairperson Chingwa sent several memos to the Gaming Administration Commission that contained directives. The Tribal Council was aware of and authorized the sending of the memos by the Chairperson. Whether the results would have differed had the Chairperson initiated different actions is purely speculation on the part of the Petitioner. The Hearing Board finds that the Petitioner failed to meet the burden of proof in regard to this allegation.

Circumstances will often demand the Tribal Council and Tribal Chairman use the information available to them to make the best decisions of judgment based on the information before them. The Petitioner alleges that had the "*Chairperson Chingwa handled this more strongly*" a different result may have occurred. The Petitioner is applying his judgment against the judgment of the Tribal Council and the Tribal Chairperson by second guessing what may have occurred. The tribal membership, by their election of the Chairperson and the Tribal Council, have placed their confidence in the decision-making abilities of their elected officials. Although people may differ in what conclusion they may reach on any given issue, it is our reliance that the people in casting their ballots have the confidence in the Tribal Council to make the best informed decisions that are in the best interest of the Tribe. The Petitioner may disagree on how the matter

was handled by the Chairperson and the Tribal Council, but when the allegation of misconduct is based on perception and subjective opinion, the action of the Tribal Council, as representatives of the membership, will prevail.

"Violation Four. We also allege that Chairman Chingwa failed to challenge the conduct of the Gaming Administration, as recorded in Administration minutes, wherein only two of the three Gaming Administrators voted on issues . . . Chairman Chingwa failed to take action when Tribal Council members pointed out that there wasn't a quorum as documented in the Gaming Administration minutes."

#### HEARING BOARD ANALYSIS AND REASONING:

The testimony presented by both the Petitioner and the Respondent showed that the entire Tribal Council was aware of the issue of whether the Gaming Administration Commission had established a quorum as well as the history of their voting practices of the Administration. If the actions of the Gaming Administration were faulty, then the Tribal Council as a whole needed to remedy the faults, as no one Council member has the authority to act alone, nor does any one Council member have the responsibility for the action or non-action of the Board, unless delegated by the Council. The Hearing Board finds that the Petitioner has failed to meet the burden of proof in regard to this allegation.

"Violation Five. We the Petitioners allege that Chairman Chingwa inappropriately used the tribal credit card . . . request the Hearing Board review the tribal credit card bills and question the Tribal Administration regarding this matter to determine how much was charged, how the money was repaid to the tribe, if the tribe paid the interest on the credit card bill and to determine what provisions of the Tribal Credit Card Policy were violated."

#### HEARING BOARD ANALYSIS AND REASONING:

Testimony revealed that there may have been some confusion earlier on with the use of the credit card, but there was no testimony which proves that Chairman Chingwa intended to misappropriate tribal funds. While there is a tribal policy in regard to the use of "travel advances" being the appropriate method of dealing with travel expenses, the question of the question of whether the travel policy applies to staff only and not to Tribal Council members or the Tribal Chairperson whose name and social security number was on the credit card further clouded the issue. The testimony and evidence showed that the problems which arose with the use of the credit card were dealt with and corrected internally. The Hearing Board finds that the Petitioner failed to substantiate that there was any significant wrongdoing by the Chairperson in regard to his use of the tribal credit card, and further finds that the evidence failed to prove that the Chairperson used the credit card with any malfeasance.

"Violation Six. During a Special Meeting of the Tribal Council for removal of two of the Gaming Administrators, a valid request from Petitioners was presented for two additional subpoenas to be issued . . . Mr. Chingwa never directed that the subpoenas be issued, never offered an explanation despite requests to do so, and he never responded to these two requests."

#### HEARING BOARD ANALYSIS AND REASONING:

Common courtesy indicates that Petitioner La Croix should have expected to receive an answer to his request for subpoenas, and the Tribal Council could have issued the subpoenas by initiating a motion. However, no motion or action was taken by the Tribal Council by the Tribal Council during the special meeting regarding the issuance of subpoenas. As stated above by this Board, the Tribal Council needs to take action as a whole, and no one Council Member has the authority to act alone, nor does any one Council Member have the responsibility for the action or non-action of the entire Tribal Council, unless such responsibility has been specifically delegated by the Council. To place the total responsibility for this breach of action on Chairman Chingwa is unworthy and this Hearing Board finds that the Petitioner has failed to meet the burden of proof in regard to this allegation.

"Violation Seven. During the October 20<sup>th</sup> hearing for Ms. Robin Gould, Mr. Chingwa made an announcement that Tribal Council members could not be used as witnesses. He did not cite any authority for having made that announcement. We believe no authority exists for him to claim as a basis for this ruling."

#### HEARING BOARD ANALYSIS AND REASONING:

As this particular hearing would be conducted before the Tribal Council itself, if Tribal Council members themselves were witnesses before the Council, they would have to recuse themselves from sitting in judgment. Testimony shown that, when Chairperson Chingwa made the announcement that Tribal Council members could not be used as witnesses, none of the Tribal Council members took objection with this statement. Without objections or contrary action, the Tribal Council's consent is implied. The Hearing Board finds that the Petitioner has failed to meet the burden of proof in regard to this allegation.

"Violation Eight. . . . Chairman Chingwa allowed former Gaming Administrator Carol McFall to resign the night before her Hearing for Removal, which had the effect of quashing the Petition for Removal without holding the required hearing(s) . . ."

**HEARING BOARD ANALYSIS AND REASONING:**

Petitioner's allegation has no merit. If a person resigns, then there is no need to continue with a removal hearing. To do so would be an act of futile and a waste of tribal resources. The Hearing Board finds that the Petitioner has failed to meet the burden of proof in regard to this allegation.

"Violation Nine. During the October 20<sup>th</sup> hearing, Chairman Chingwa did direct a Petitioner to provide copies of the evidence presented for each and every one of the Tribal council members and prohibited the Petitioners from using the copier at the Tribal Offices. The Petitioners then did so at their own expense at Office Max. But after reviewing the Ordinance, the Petitioners could not find where Chairman Chingwa had the authority to change the Ordinance governing Removal to require that copies be made for each Tribal Council member . . ."

**HEARING BOARD ANALYSIS AND REASONING:**

Taking into consideration the business practices of the tribal government offices and programs through the testimony provided, it appears to be the practice to require that copies of pertinent documents be made available at Tribal Council meetings for each member of the Council. Tribal copy machines are for the use of tribal government departments which access them by code and bear the financial responsibility for copies made. The practice of asking that copies be made available for each of the Tribal Council members is reasonable, in light of increased Tribal Council efficiency and the minimal burden on the information supplier. Further testimony revealed that the Petitioner was reimbursed for the expense that he incurred in providing additional copies. The Hearing Board finds that the Petitioner failed to show harm, other than mere inconvenience. Thus, Petitioner has not meet the burden of proof in regard to this allegation.

"Violation Ten.

Chairman Chingwa conducted his own investigation into the alleged "Comp" abuse by the Director of Compliance regarding rooms at the Holiday Inn . . . Chairman Chingwa did interview an employee of and reviewed records at the Holiday Inn . . . Mr. Chingwa did not consult with the tribal Council before investigating this matter on his own and thus violated his own directive."

**HEARING BOARD ANALYSIS AND REASONING:**

Testimony revealed that the Chairperson was approached by the hotel staff, who conveyed information regarding the incident to Chairperson Chingwa. Chairperson Chingwa consulted with

the Tribal Council on the matter and the matter was referred to the appropriate authorities. The Hearing Board finds that Chairperson Chingwa acted within his authority as CEO of the Tribe and followed the processes and procedures for conducting investigations. Surely, this matter was one of grave concern. It indeed appeared that the rooms had been "comped". Furthermore, minors were drinking in rooms that appeared to be reserved by the Tribe. Numerous law enforcement agencies had been on the scene. The legal, political and public relations ramifications were numerous. Clearly, there were those who exercised very poor judgment in this matter, but the Tribal Chairman was not one of those. The Hearing Board finds the Petitioner has failed to show that Chairman Chingwa acted outside the scope of his authority in regard to the circumstances of this allegation.

**Conclusion**

It is the responsibility of the Hearing Board to determine the validity of the allegations made by Petitioner Tim La Croix in the January 19, 2001 Petition for the removal of Chairperson Gerald V. Chingwa from the LTBB Tribal Council and assess whether the evidence is of such a nature to conclude that Chairperson Chingwa should be removed from office. As Mr. Chingwa was elected to serve as Tribal Chairperson by tribal membership, the will of the people must be upheld unless there is a clear showing of serious wrongdoing.

The Hearing Board unanimously agrees that the Petitioner failed to provide evidence to substantiate the allegations as set forth in Petition for Removal and failed to meet the burden of proof necessary to establish "specific facts which, if shown to be true, would establish that the official [Chairperson Chingwa] has engaged in conduct which constitutes a violation of this Constitution and By-laws or any duly enacted ordinance or resolution of the Bands Board of Directors."

**FOR ALL OF THE FOREGOING, THIS HEARING BOARD DENIES  
PETITIONER'S REQUEST TO REMOVE CHAIRMAN CHINGWA FROM OFFICE.**

5/15/01  
DATE

Michael Petoskey  
Hearing Board Chairman  
For a Unanimous Hearing Board