



Boji Tower | 124 W. Allegan Street | Suite 1400 | Lansing, MI 48933

***CONFIDENTIAL MEMORANDUM PROTECTED BY ATTORNEY-CLIENT PRIVILEGE***

## MEMORANDUM

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**TO:** Lawrence Barton, Chief Financial Officer, Oneida Nation of Wisconsin  
RaLinda Ninham-Lamberies, Assistant Chief Financial Officer, Oneida Nation of Wisconsin

**FROM:** Sarah Harris and Bryan Newland

**DATE:** November 23, 2016

**RE:** **Analysis of June 13, 2016 Oneida General Tribal Council Meeting Motions Regarding Per Capita**

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### **I. ISSUE**

Did the Oneida General Tribal Council (“GTC”) properly adopt a main motion and amendment to revise the per capita payment amount to \$1,300 instead of \$2,000 (the amount proposed by the Main Motion)? If so, what was the impact of that amendment on the main motion?

### **II. BREIF ANSWER**

Both the main motion and the amendment to reduce the per capita payment were in order and properly adopted by the GTC in compliance with the Ten Day Notice Policy, past practices of the GTC and Robert’s Rules or Order. The amendment revised the amount of the proposed per capita payment in the main motion from \$2,000 to \$1,300. Consequently, the main motion that was before and adopted by the GTC became a motion to pay \$1,300 per capita from FY 2017-2021.

Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com  
Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com  
Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com

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### **III. BACKGROUND**

#### **A. The June 13, 2016 General Tribal Council Meeting**

On June 13, 2016, the GTC convened a meeting to consider, among other things, a resolution by Yvonne Metivier to “direct the [Oneida Business Committee (“Business Committee” or “OBC”)] to pay \$2,000 Per Capita beginning Fiscal Year 2017 through 2021.”

Mrs. Metivier presented her resolution to the GTC and offered a motion to approve the resolution (which was seconded). Mrs. Metivier’s presentation was followed by a presentation regarding the fiscal impact of the proposed resolution and discussion by the GTC. The Chair recognized Nancy Skenandore, who asked if it was too late to adopt the Business Committee’s plan regarding per capita payments. The Chair responded that Mrs. Skenandore could make an amendment to the main motion, for instance altering the amount of the per capita payment. At that point, Mrs. Skenandore proposed an amendment to the main motion to reduce the per capita amount to \$1,300, instead of \$2,000. The Chair repeated the amendment to revise the per capita amount to \$1,300, instead of \$2,000.

There was a question regarding whether an amendment was the proper way to accomplish the reduction of the main motion’s per capita amount from \$2000 to \$1300. A GTC member suggested that the motion to amend to \$1,300 could not override the main motion. The member suggested that, in order to replace the main motion’s \$2,000 per capita payment, the GTC would need to vote down the main motion and then bring a separate motion to adopt a per capita payment of \$1,300.

The Chair requested that the parliamentarian render an opinion regarding whether the \$1,300 would override the \$2,000 in the main motion. The parliamentarian stated that the amendment to reduce the dollar amount to \$1,300 was in order. She stated that the main motion called for a \$2,000 per capita payment and the amendment would reduce that amount to \$1,300. The parliamentarian concluded that the amendment was in order and if both the amendment and the main motion were adopted, the per capita amount would be \$1,300.

During discussion, Debra Schnell proposed a second amendment to “revise the per capita payment plan to be in effect for the next three (3) fiscal years instead of the net five (5) fiscal years.” The GTC then entered into discussion regarding per capita payments.

A GTC member called for the question and the Chair stated that the GTC would be voting on two amendments. The first amendment that the GTC would vote on proposed changing the number of years for the per capita payment, making payments for the next three, rather than the next five, fiscal years. A GTC member asked a clarifying question about the dollar amount for the per capita payments. The Chair stated “it will be next” and that there were a total of “three motions we have to vote on, we have two amendments and the main motion.” The Chair then stated that “the first one is the three years, reducing it [the main motion’s provision for 5 years of per capita payments] to three years, the next one will be the reduction to \$1,300 and then the

**Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com**

**Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com**

**Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com**

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main motion that would be to approve the per capita at \$1,300.” She clarified that the main motion “says \$2,000 but, if you approve the amendment at \$1,300, then it’s \$1,300. That’s what an amendment does, an amendment changes the main motion.”

The Chair called for a vote on the first amendment regarding reducing the number of years for per capita from five years to three years. She stated “all of those in favor of the first amendment, the first amendment is to revise the per capita plan to be in effect for three fiscal years instead of five fiscal years.” The amendment to reduce the number of years for per capita payment failed.

Soon after voting on the proposed amendment reducing the years for per capita payments, there was another amendment offered, which is worth mentioning but not essential to the analysis in this memorandum. That amendment was “to go with the Business Committee’s plan to pay off the debt.” There was a call for the question. The Chair repeated the amendment “regarding going with the Business Committee’s plan to pay off the debt.” That motion carried.

The Chair stated “the next motion that we’ll be taking up is the motion to amend the main motion to revise the per capita payment amount to \$1,300 instead of \$2,000.” There was an immediate call for the question. The Chair stated “So the amendment on the floor that we’ll be voting on . . . is to revise the per capita payment amount to \$1,300 instead of \$2,000. If this amendment passes, the main motion will change to \$1,300 because we’re amending the main motion. What we are voting on now is we’re amending the main motion to read \$1,300 instead of \$2,000. So all of those in favor to revise the per capita payment amount to \$1,300 instead of \$2,000 please raise your hand.” The motion carried.

A GTC member suggested an additional amendment, which was rejected by the Chair because the main motion had already been amended twice. The Chair clarified that there were two amendments, the first was to pay down the debt and “the second to revise the per capita from \$2,000 to \$1,300. So the main motion that is on the floor now at this point is to direct the Business Committee to pay, and the \$2,000 again was amended to \$1,300 from FY 2017 to 2021 . . . all those in favor please raise your hand to be counted.”

The Chair stopped voting and notified attendees that she would redo the vote because, she stated, she was “hearing people don’t understand what we are voting on and this is important, so I want to make sure everybody knows. You have to understand that when you make a motion, your main motion says \$2,000 but the next one, that you just approved, says \$1,300. So when you read the motion and the amendments all together, what you will get at the end of the day, if you approve the main motion, is a per capita payment at \$1,300 from Fiscal Years 2017 through 2021 . . .” from specific funds with others to be used to pay down the debt. “So that’s what your voting on, in totality, when you are voting on the main motion. So again, the main motion, although it says \$2,000, you just amended it to say \$1,300. So you have to read it all together.” After the explanation, the GTC voted again and the motion carried.

## **B. Oneida General Tribal Council Ten Day Notice Policy**

The GTC has adopted a Ten Day Notice Policy which provides that “[a]ny resolution or motion pertaining to due process, or action that would have a direct impact on budgets or operations of the tribe shall be subject to a 10-day notice requirement.” Ten Day Notice Policy, III.1. In general, the Ten Day Notice Policy ensures that the GTC has been provided adequate notice of and information regarding regular or special business that will be brought before the GTC. The Policy also provides that “[a]ll resolutions to be introduced shall be subject to the 10-day notice requirement.” The Policy provides the specific form for resolutions and the steps that the author of a resolution and the tribal Secretary must take to provide notice to the GTC. Ten Day Notice Policy, III – V. In addition, the Policy lays out the process for introducing resolutions at GTC meeting, as follows: 1. Introduction of Resolution by author(s), 2. Discussion, 3. Chair shall entertain a motion. Action should address the introduced Resolution and 4. Vote on the motion.

## **C. Robert’s Rules of Order as Used by the General Tribal Council**

GTC meetings employ a modified version of Robert’s Rules of Order referred to as “Robert’s Rules of Order As Used by the General Tribal Council.” GTC meetings follow Robert’s Rules of Order, but “given the fluctuating nature of the membership attending each meeting, the parliamentarian has generally ruled that the membership’s application of the rules of order supersedes any version of Robert’s Rules of Order.” Accordingly, where there is a conflict between Robert’s Rules and GTC precedents set by application of the Rules, the precedents set by GTC application of Robert’s Rules of Order govern. Robert’s Rules of Order as Used by the GTC does not specify the procedure for amending a motion that is pending before the GTC.<sup>1</sup> Therefore, it is proper to look to Robert’s Rules of Order for guidance regarding the process for amending motions.

## **D. Robert’s Rules of Order regarding amendments**

### **1. An amendment must be germane.**

Robert’s Rules of Order state that a motion is a formal proposal by a member in a meeting that the assembly take certain action. Robert’s Rules of Order Newly Revised, 11th ed., 130 (Da Capo Press, 2011) [hereinafter Robert’s Rules].

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<sup>1</sup> Robert’s Rules of Order as used by the GTC does provide for “Rescinding or Amending a Prior Motion” before the GTC, stating that such a “motion requires a two-thirds vote under section III(1)(a)(3) of the Ten Day Notice Policy.” The amendments at issue were offered as amendments to the main motion for a per capita payment of \$2,000 from FY 2017-2021, which was pending before the GTC at the time of the amendments. As such, the amendments did not rescind or amend a prior motion of the GTC and this section of the Robert’s Rules of Order as Used by the GTC is not necessarily relevant to this discussion.

**Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com**

**Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com**

**Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com**

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Robert's Rules also provide that an amendment is "a motion to modify the wording – and within certain limits the meaning – of a pending motion before the pending motion itself is acted upon." Robert's Rules state that an amendment must be germane, which means that it must be "closely related to or hav[e] bearing on the subject of the motion to be amended." Robert's Rules, at 131. Robert's Rules further clarifies that, in order to be germane, an "amendment must in some way involve the same question that is raised by the motion" it seeks to amend. Robert's Rules, at 136.

An amendment cannot introduce an independent question; but an amendment can change the meaning and the original intent of a main motion and still be germane. Robert's Rules, at 136. The following example helps to illustrate how an amendment can change the meaning of a main motion (and indeed be contrary to the intent of the main motion) but still be germane. Assume, that a main motion "that the City Council *congratulate* Officer George for his action ..." is pending before a City Council. An amendment to strike out *congratulate* and insert *reprimand* in its place is germane and in order despite the fact that *congratulating* someone for an action, is quite different from *reprimanding* them for the same action. Nevertheless, both ideas address the council's opinion of the officer's action, therefore the amendment is germane even though it changes the meaning of the main motion.

## 2. Forms of amendments.

The rules governing different forms for amendments flow from the principle that after the assembly has voted that "certain words (or a certain paragraph) shall, or shall not, form part of a pending resolution, it is not in order to make another motion to amend that raises the same question of content and effect. Common sense should guide the presiding officer in interpreting the rules, both to give freedom for improvement to the main motion finally to be voted on, and at the same time protect the assembly from motions for amendment that present questions it has already decided." Robert's Rules, at 139.

One acceptable form of an amendment is to strike out and insert words. One way to accomplish a strike out and insert amendment is to insert different wording in the same place as wording that was struck out of the original motion. Robert's Rules, at 149. In order to be proper, the words to be inserted by such an amendment must in some way be related to, or address the same issue as the words to be struck out. *Id.* The Rules provide the following example of a strike out and insert amendment:

Member A (obtaining the floor): I move to amend by striking out "Rockville" and inserting "Chatham."

Chair: It is moved and seconded to strike out "Rockville" and insert "Chatham." If the amendment is adopted, the resolution will be to "endorse the Chatham site for the new Community College." The question is on striking out "Rockville" and inserting "Chatham."

Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com  
Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com  
Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com

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Robert's Rules, at 153.

There are some instances when an amendment would be improper under Robert's Rules.<sup>2</sup> For example, if an amendment is not germane. In addition, an amendment would be improper if it conflicts with the main motion in such a way that makes adoption of the amendment equivalent to voting to reject the main motion. For example, consider that there is a main motion to "pay per capita of \$5,000 in 2017." An amendment to insert "not" before "pay per capita of \$5,000 in 2017" would be improper because adoption of the amendment would have the same impact as simply voting to reject the main motion. Also, an amendment that would cause the main motion, as amended, to be out of order would be improper. Robert's Rules, at 138.

### **3. A vote to amend does not equate to approval of the main motion as amended.**

The adoption of a motion to amend does not, by itself, adopt the main motion as amended, instead the main motion remains pending in its modified form. Robert's Rules, 131. Put differently, the main motion would be changed to reflect the amendment and the amended motion would now be pending before the body until voted on or further action is taken. A member's vote on a motion to amend does not bind the member to vote in a particular way on the motion to which the amendment applies, she is free to vote as she pleases on the main motion as amended. Robert's Rules, at 131.

### **E. Past practices of the GTC**

A review of GTC meeting minutes from 2010 to the present, as well as parliamentary rulings contained therein, makes clear that the GTC frequently adopts amendments that alter the main motion. For instance, at the beginning of each meeting the GTC takes action to adopt the agenda for the meeting. Often members offer multiple amendments to the proposed agenda after a main motion to adopt the agenda is offered. Amendments often propose striking agenda items, moving items or striking items on the agenda and putting other items in their place.<sup>3</sup> After

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<sup>2</sup> There are other instances in which an amendment may be improper but only those that appear relevant to the analysis presented in this memorandum are discussed here.

<sup>3</sup> *See, for example*, GTC Meeting Minutes, Nov. 21, 2011 (Motion to adopt the agenda (second). Subsequent amendment to the main motion to switch resolution number 8 with resolution number 2 and also, per petition, resolution number four will be removed (second). Amendment approved by a show of hands. The Chair of the meeting then stated "Now we'll vote on the main motion to adopt the agenda with the amendments." Motion approved by show of hands); GTC Meeting Minutes, July 8, 2013 (Main motion to adopt the agenda as presented (second). After offering the main motion, two amendments were proposed to the main motion, the first amendment proposed dismissing agenda item 6 because GTC already took action on Jan. 7, 2013 (approved by a show of hands) and the second amendment to the main motion was to remove the rest of the items from the agenda (approved by a show of hands). The GTC then voted on the on the main motion to adopt the agenda, which was approved by a show of hands.

**Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com**

**Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com**

**Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com**

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voting on the amendments, the GTC votes on the main motion to adopt the agenda which includes any changes to the agenda made by the amendments. A brief recitation of other amendments to main motions follows.<sup>4</sup>

On September 18, 2010, the GTC held a meeting where it considered, among other things, a petition for a \$.50 pay increase for employees *earning less than \$90,000*. GTC Meeting Minutes, Sept. 18, 2010, at 10-24. An amendment was offered that instead proposed \$.50 raise for *all employees making \$65,000 dollars or less* (as well as additional provisions for 401(k) match and identifying specific funds to expend). The Chairman called the main motion out of order and it was appealed to the GTC, which ruled the motion in order. The Chair referred a question regarding whether the motion and the amendment violated the Ten Day Notice Policy to the parliamentarian, who stated:

The question presented to the Chair is whether or not the amendment violates the 10 day notice policy. The petition identifies a \$.50 raise to employees making less than \$90,000 a year, the amendment lowers the amount and specifically identifies where those dollars are coming from. Because this is also presented on the budget meeting, all that information was presented to the membership and because its less than and not more than, the petitioned for amount, it would be within order.

*Id.* at 14. A second amendment was offered that the electronic ballot should be in 45 days. The GTC first voted on the second amendment, which was rejected. *Id.* at 16. Next, the GTC voted on the first amendment that applied the \$.50 raise only to those making \$65,000 or less (rather than \$90,000 or less, as proposed in the main motion), that amendment was approved. *Id.* The Main Motion failed, nevertheless it is relevant that the proposed amendment to reduce the dollar amount was in order. *Id.* at 24.

On November 28, 2011, the General Tribal Council held a meeting where the GTC considered whether to adopt the FY 2012-2014 budget resolution. GTC Meeting Minutes, Nov. 28, 2011, at 40-41. There was a main motion to approve the resolution adopting the FY 2012 Budget, which was seconded. After the main motion, there was debate about whether to remove an investment in the Native American Bank from the budget and ultimately an amendment was offered to “amend the main motion to remove the Native American Bank investment.” *Id.* The amendment to remove that investment from the budget passed overwhelming. *Id.* Immediately after approving the amendment to remove that specific investment, the GTC voted on the main motion to approve the resolution adopting the FY2012 Budget, that motion was approved. *Id.*

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The meeting minutes from the July 8, 2013 meeting indicate that the amendments altered the main motion by striking the agenda items identified in the two adopted amendments).

<sup>4</sup> Examples on this list may not include every amendment or procedural step to amend the main motion but include items that are relevant to the analysis.

**Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com**

**Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com**

**Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com**

On November 19, 2012, the GTC considered petition to revise the GTC stipend program, implement a standard GTC meeting schedule and change the per capita distribution plan. There was a main motion to “not consider the petition because it was not fair to everyone.” GTC Meeting Minutes, Nov. 19, 2012, at 30. An amendment was proposed to direct the Business Committee to come back in 120 days with a plan to “direct per capita monies toward GTC members.” The Chair requested a parliamentary opinion regarding whether the amendment was out of order because it was contrary to the main motion. *Id.* at 31. The parliamentary stated that “the main motion essentially rejects the petition. The amendment to the motion gives further direction to the Business Committee. *Id.* The amendment to the motion is within the scope of the subject matter brought before the GTC. Both [the motion and the amendment] would be in order.” *Id.*

On November 14, 2015, the GTC considered a main motion that proposed that names and addresses of people who sign petitions not be published in GTC meeting mail outs. An amendment was proposed to only include names (not additional identifying information) on the mailings. GTC Meeting Minutes, Nov. 14, 2015, at 41. A member requested a parliamentary opinion regarding whether the amendment was proper, even though it contradicted the main motion. The parliamentary responded:

The question is whether or not the amendment can be contrary to the main motion and still be ruled in order. If the amendment were adopted, the main motion would be amended to reflect that only the names will be printed and delivered to the General Tribal Council. That would be in order with the main motion because it was amended. I don't find anything that would suggest . . . that amendment is out of order.

*Id.* at 42. The Chair accepted that ruling. A second amendment was then offered which proposed only including the enrollment number of those that signed petitions. The Chair ruled that both amendments were in order and proceeded with a vote on both amendments.

On January 19, 2015, the GTC considered a main motion to reject the FY 2015 budget. An amendment was offered to set aside the budget for 60-day review, rather than rejecting the budget as proposed in the main motion. GTC Meeting Minutes, Jan. 19, 2015, at 72-73. The Chair sought a parliamentary opinion regarding whether the amendment contradicted the main motion. The parliamentary stated:

The question is whether the motion is in order because it appears to contradict the main motion. The amendment amends the main motion and instead of rejecting it, simply sets the budget aside for 60 days. It would be my opinion that it is in order and would amend the main motion appropriately. \*\*\*\* The motion, it can't contradict the main motion, it amends to instead of rejecting to

essentially table it for 60 days to allow the budget itself to be reviewed. If the amendment is adopted, the main motion is now amended accordingly. Therefore, it would be in order. *Id.*

At a June 1, 2015 meeting, the GTC considered a petition to direct the Business Committee to raise employee salaries \$0.99 per hour for *all employees that make under \$65,000*, with no layoffs. GTC Meeting Minutes, June 1, 2015, at 28. A proposed amendment directed the Business Committee to raise *all employees' salaries* by \$0.99 per hour and *to include casino dealers and the boards, committees and commissions*, with no layoffs. *Id.* The Chair felt that the amendment might contradict the main motion and asked the parliamentarian whether the motion was in order. The parliamentarian ruled that “the original motion reflected \$0.99 per hour increase for employees of the tribe making \$65,000 per year or less. The materials presented to the General Tribal Council identified a broad range of options available. The presentation made to the General Tribal Council also identified that. The information was presented to the membership. The motion modifies the main motion by increasing its scope and would be in order.” *Id.* at 33.

#### IV. ANALYSIS

There are concerns regarding alleged “irregularities” with the adoption of the amendment to reduce the per capita payment from \$2,000 to \$1,300 (“the \$1,300 Amendment”) and the main motion. More specifically, there is an allegation that the amendment was out of order because it contradicted the main motion. A question has also been raised regarding whether the main motion and the amendment, which were both adopted, stand independent of each other. In other words, did the GTC’s adoption of the amendment result in approval of a motion \$1,300 per capita payment for FY 2017-2021 and the subsequent adoption of the main motion authorize another per capita payment for \$2,000 for FY 2017-2021? The short answer is no. The main motion and the \$1,300 Amendment were properly before the GTC and both were in order and adopted in compliance with GTC past practice and Robert’s Rules. The amendment reduced the main motion’s per capita payment to \$1,300.

The GTC members received notice of Mrs. Metivier’s petition to pay per capita of \$2,000 from FY 2017-2021 in compliance with the Ten Day Notice Policy. Accordingly, the main motion was properly before the GTC for consideration. Since the GTC was provided proper notice of the intent to discuss and potentially take action on a resolution to pay per capita from 2017-2021, the \$1,300 Amendment would not be out of order for lack of notice because it is within the scope of issues presented in the main motion.

The GTC practice is to allow up to two amendments on the floor at a given time and up to two approved amendments to a main motion.<sup>5</sup> The GTC practice is to first vote on amendments to

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<sup>5</sup> GTC Meeting Minutes, Jan. 19, 2015 (parliamentarian opinion that a Main Motion can to have up to “two amendments that pass. Amendments that do not pass are not counted”).

the main motion and then on the main motion itself, subject to the amendments.<sup>6</sup> The main motion and amendments to the per capita plan were considered and adopted consistent with this practice. There were three separate motions to amend the main motion: the \$1,300 Amendment; a proposed amendment to reduce the number of years per capita is paid from five to three and a proposed amendment to adopt the Business Committee’s plan to pay down debt. The \$1,300 Amendment was made first and the amendment to change the number of years for payment second. The Chair called a vote on the proposed amendment to reduce of years first, that amendment failed. During discussion regarding the first amendment to reduce the per capita to \$1,300, a member proposed an amendment to pay down the debt. Consistent with GTC past practices, there were no more than two amendments on the floor at any given time and only two amendments were adopted.

The \$1,300 Amendment is germane because it is closely related to and involves the same question that is raised by the main motion. The main motion asked GTC whether they would like to pay a \$2,000 per capita for FY 2017-2021. The \$1,300 Amendment did not seek to change the purpose of the main motion, to pay per capita to eligible members of the Oneida Nation. The amendment simply reduced the amount of per capita to be paid.

While it is true that an amendment could be out of order because it is contradictory to a main motion, the contradiction would have to make adoption of the amendment equivalent to rejection of the main motion. For instance, a proposed amendment to the main motion to “not pay \$2,000 per capita for FY 2017-2021” would have been improper because adoption of the amendment would have the same effect as rejecting the main motion. The \$1,300 Amendment, however, did not entirely reject the per capita payment in the main motion. Instead, the amendment proposed a different amount of per capita be paid. As such, the \$1,300 Amendment changed an element of the main motion but did not alter the purpose of the main motion, providing a per capita payment to members. The amendment changed the main motion but did not contradict in a way that makes it improper.

Previously, the parliamentarian has considered whether an amendment is out of order because it contradicts the main motion. A review of the GTC meeting minutes reveals several occasions when the parliamentarian ruled that a proposed amendment was within the scope of and did not contradict the main motion but, in fact, amended the main motion. *See*, for example, GTC Meeting Minutes, Nov. 14, 2015 (main motion that names and addresses of people who sign

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<sup>6</sup> *See, for example*, GTC Meeting Minutes, Jan. 2, 2012, at 49 (“Wesley Martin: How can we be making discussions on the amendments when we had no discussion on the main motion? Ed Delgado (Chair): Because the amendments come first. We’re doing the amendments, and then we’ll do the main motion”); GTC Meeting Minutes, Dec. 15, 2013, at 4-6 (“Frank Cornelius: Mr. Chairman, why don’t we vote on the main motion and the addendum second? You are doing this backwards. Ed Delgado: No, this is the way it is done. You vote on the amendment and then you vote on the main motion. That is always the way it has always been done,” followed by a vote on the amendment and then a vote on the main motion).

petitions not be published in GTC meeting mail outs; proposed amendment to include names in meeting mail outs; amendment ruled not contradictory to main motion); GTC Meeting Minutes, Jan. 19, 2015 (main motion to reject the FY2015; proposed amendment to set-aside the budget for 60-day review; amendment ruled not contradictory to main motion because amendment did not reject main motion); GTC Meeting Minutes, Nov. 19, 2012 (main motion to revise the GTC stipend program, implement a standard GTC meeting schedule and change the per capita distribution plan; amendment to “not consider the petition because it was not fair to everyone;” amendment to direct Business Committee to prepare plan in 120 days – amendments not contrary, within scope of matters pending in main motion thus proper). In those cases, the parliamentarian concluded that the main motion incorporated the changes effected by the adopted amendments. Similarly, the \$1,300 Amendment was sufficiently related to the issues in the main motion to be considered germane and was not contradictory to the main motion because it only sought to revise the amount of per capita payment provided for in the main motion, not reject it outright. Accordingly, with adoption of the \$1,300, the main motion was revised to include a \$1,300 payment, rather than \$2,000.

Turning now to the question of whether the \$1,300 Amendment and the main motion for per capita stand independent of each other, the form of the amendment to reduce the per capita is relevant. The amendment was to “revise” the per capita payment amount to \$1,300 instead of the \$2,000 payment originally proposed in the main motion. The form of this amendment is akin to the strike out and insert motion described in Robert’s Rules of Order, where the amendment seeks to strike out certain words and insert others in their place. Robert’s Rules, at 150 (striking out a word or words and inserting others in their place is “perhaps more common” than other forms of strike and insert amendments, where words are struck and words inserted elsewhere in the main motion).

An amendment that proposes to strike out and insert a word or words in the main motion has a different effect on the main motion than an amendment that proposes to simply add something additional to the main amendment. For example, assume that a proposed amendment sought to add “and an additional \$1,300 per capita payment for FY 2017-2021” to the end of the main motion. That proposed amendment would have the effect of adding a separate per capita payment of \$1,300, in addition to the \$2,000 in the main motion. The \$1,300 Amendment did not simply add to the main motion, it proposed a change to it. Indeed, the amendment was “to *revise* the Per Capita payment amount to \$1,300 *instead* of \$2000.” (emphasis added). GTC has adopted amendments that make changes to the main motion on many occasions and the \$1,300 Amendment is consistent with past GTC practice regarding amendments to main motions. *See* discussion at Section III.E. (regarding past GTC amendments, including amending agendas prior to adoption by main motion and other similar amendments).

It’s also worth noting that, during discussion of the proposed amendments, a GTC member asked a question regarding the impact of the amendment on the main motion and the Chair requested a parliamentarian opinion. The parliamentarian stated that the amendment was in order and, if adopted, the amendment would reduce the per capita payment in the main motion from \$2,000 to \$1,300. Nothing in the audio from the June 13, 2016 meeting indicates that GTC rejected or

**Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com**

**Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com**

**Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com**

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sought to challenge the parliamentary ruling at that time. The GTC members could have voiced opposition to this position during the GTC meeting and, ostensibly, they did not.

Finally, it's also noteworthy that the Chair of the GTC meeting on June 13, 2016 also effectively followed the format for a strike out and insert amendment, as laid out in the example provided in Robert's Rules. *See*, discussion at Section III.D.2. (providing example of how Chair should announce strike and insert amendments to an assembly). She repeatedly stated that the purpose of the amendment was insert \$1,300 instead of \$2,000 in the main motion, clarified the impact of the amendment on the main motion and stated that the amendment needed to be voted on independent of the main motion.<sup>7</sup> Then, when taking up the main motion, the Chair again explained the impact of the amendment that was adopted.<sup>8</sup> The Chair's multiple clarifications regarding the main motion, the content of the amendments and the impact of the amendment on the main motion should have provided adequate notice to GTC regarding the issues GTC was discussing and taking action on.

## V. CONCLUSION

The main motion and the \$1,300 Amendment were properly before the GTC and both were in order and adopted in compliance with the Ten Day Notice Policy, GTC past practice and Robert's Rules. The \$1,300 Amendment reduced the main motion's per capita payment to \$1,300.

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<sup>7</sup> "So the amendment on the floor that we'll be voting on . . . is to revise the per capita payment amount to \$1,300 instead of \$2,000. If this amendment passes, the main motion will change to \$1,300 because we're amending the main motion. What we are voting on now is we're amending the main motion to read \$1,300 instead of \$2,000. So all of those in favor to revise the per capita payment amount to \$1,300 instead of \$2,000 please raise your hand."

<sup>8</sup> "You have to understand that when you make a motion, your main motion says \$2,000 but the next one, that you just approved, says \$1,300. So when you read the motion and the amendments all together, what you will get at the end of the day, if you approve the main motion, is a per capita payment at \$1,300 from Fiscal Years 2017 through 2021 . . . . So again, the main motion, although it says \$2,000, you just amended it to say \$1,300. So you have to read it all together."

**Bryan Newland | (517) 862-5570 | bnewland@fletcherlawpllc.com**

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**Ezekiel Fletcher | (517) 755-0776 | zfletcher@fletcherlawpllc.com**

**Sarah Harris | (202) 441-8670 | sharris@fletcherlawpllc.com**

**RE: FLETCHER OPINION  
FINANCE PRESENTATION**

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**(MULTIMEDIA PRESENTATION)**



## MEMORANDUM

To: General Tribal Council

From: Oneida Business Committee

Date: December 28, 2016

RE: Oneida Business Committee Recommended Action  
Fletcher Opinion on GTC action of June 13, 2016 regarding per capita

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On June 13, 2016, the General Tribal Council adopted a motion and amendments to approve a \$1300 per capita payment for a five year period and to utilize the Contingency Fund to pay down debt in order to fund the per capita payment with the savings. Chairwoman Cristina Danforth raised a question about the procedures that were taken at the June 13th meeting when she called the July 2016 Semi-Annual meeting to order. The Oneida Business Committee then received a request by Chairwoman Danforth to have an outside legal review of the June 13th action by the General Tribal Council.

Although the Oneida Business Committee did not immediately approve the request, ultimately the Chief Financial Officer was directed to obtain legal counsel to conduct a review. The Chief Financial Officer had a request for bids presented to six firms and three firms responded. The Financial Office reviewed and scored the responses to the request for bids and the firm with the highest score was selected, Fletcher Law PLLC, to review the June 13th actions of the General Tribal Council.

On September 19, 2016, the General Tribal Council tabled the agenda for the budget meeting and directed that the Oneida Business Committee bring the outside legal opinion for review by the General Tribal Council. Further, the General Tribal Council directed that the budget meeting could not be rescheduled until the General Tribal Council had an opportunity to review and take action regarding the June 13th actions of the General Tribal Council.

The legal opinion from Fletcher Law PLLC is attached for your review. We have reviewed this opinion and believe that it accurately represents the historical actions of the General Tribal Council and the application of those actions to the June 13th actions of the General Tribal Council.

Motion by Yvonne Metivier to direct the OBC to pay \$2,000 Per Capita beginning Fiscal Year 2017 through 2021. Seconded by Scharlene Kasee. Motion carried by hand count: 1068 support; 200 opposed; 35 abstained.

Amendment to the main motion by Nancy Skenandore to revise the Per Capita payment amount to \$1,300 instead of \$2,000. Seconded by Don Channon. Motion carried by hand count: 791 support; 702 opposed; 32 abstained.

Amendment to the main motion by David P. Jordan to go with the OBC's plan to pay off the debt. Seconded by Chris Cornelius. Motion carried by hand count: 697 support; 612 opposed; 87 abstained.

The legal opinion identifies that the above motion was in order under Robert's Rules of Order, the procedures used by the General Tribal Council, and consistent with prior similar actions.

**Recommendation: Motion to accept the third party legal opinion and move forward with the June 13th actions of the General Tribal Council regarding per capita**