



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Eastern Regional Office  
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**AUG 19 2011**

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Sirs:

In early June, we were informed by Cayuga Nation ("Nation") members that some clan representatives had been removed and new clan representatives appointed. According to them, as a result of these actions, new members of the Nation's Council had been installed and new federal representatives had been designated. They informed us of these changes so that the Bureau of Indian Affairs (BIA) could acknowledge and begin dealing with the newly appointed federal representatives.

These actions were followed by a controversial confrontation between supporters of the alleged new Nation's Council and some members of the incumbent Council. Soon, the Regional Office was bombarded with information and allegations from attorneys who represent both factions.

To help us address this issue, I asked both attorneys to submit their positions as to the actions just described. The purported new Council is represented by Joseph Heath, Attorney, and the incumbent Council members (Mr. Clint Halftown, Mr. Tim Twoguns, and Mr. Gary Wheeler) are represented by Mr. Daniel French and Mr. Lee Alcott, Attorneys. (Hereafter, the parties shall be referred to as Mr. Heath's clients and the clients of Messrs. French & Alcott.) On July 5, all submissions had been received and have now been considered.

## Analysis

Issues presented for my review include the reconstitution of the Council of the Cayuga Nation, the validity of employment terminations, whether protests were violent or peaceful, whether the Nation Council's actions were in keeping with previous BIA decisions, and whether all previously-recognized Council members were allowed to fully participate in directing the affairs of the Nation. However, the pivotal issue presented is whether the actions of Mr. Heath's clients in reconstituting the Nation's Council and appointing new federal representatives were valid and should be given appropriate weight by the BIA. That is the matter on which this decision focuses.

As to the allegations of wrongdoing by both parties concerning waste, fraud or misuse of Nation's funds, either the Federal Bureau of Investigation or the Department of the Interior's Office of the Inspector General are appropriate points of contact for such matters. Those complaints should be addressed to those entities.

Here, we have two parties alleging that they are the appropriately-recognized federal representatives that the BIA should deal with. The BIA does not appoint the Nation's leaders. The choice of leadership resides within the Nation. For the limited purpose of determining to whom BIA funds are appropriately directed in carrying out the government-to-government relationship, the BIA, in its capacity as a steward of federal funds and programs provided to Indian tribes and nations, can only recognize or not recognize the actions of a nation in choosing its leaders. That is the limited scope of this determination.

Our examination of the allegations indicates that the actions triggering the earlier decisions can be distinguished from the circumstances of today's controversy. The earlier decisions dealt with an attempt by 5 members of the Council to remove Mr. Halftown from his position on the Council and as the Nation's federal representative, along with a quick reversal of position by two of those voting for his removal. (BIA decisions of March 15, 2005 and May 31, 2006 along with a subsequent IBIA decision of May 4, 2009.)

In the present instance, the alleged new Nation Council resulted from action of the three Clan Mothers, not an action of only one clan mother or the members of the Nation Council as in the previous cases. (I note that although these earlier decisions discussed Clan Mother Hill's dismissal of Mr. Halftown, the major focus of the decisions was on the Council action and the question of consensus.)

The clients of Messrs. French & Alcott categorically deny the validity the actions of Mr. Heath's clients on the bases of *collateral estoppel* and *res judicata*. Their assertion is that previous BIA decisions of March 15, 2006 and May 31, 2006 along with a subsequent IBIA decision (May 4, 2009) regarding the Nation's leadership are essentially permanent. That view would appear to

ignore the right of the Nation, in following its customs and traditions, to choose or change its leadership at any time in response to changing circumstances.

In their sworn statements, the three Clan Mothers state that on May 31, Turtle Clan Mother Bennett relieved Mr. Timothy Twoguns and Mr. Gary Wheeler of their appointments as Turtle Clan representatives. In their places, she appointed Mr. Justin Bennett and Mr. Sam Campbell. At the same time, Heron Clan Mother Hill confirmed the status of Mr. William C. Jacobs as a representative of the Heron Clan. She also states that she relieved Mr. Clint Halftown of his appointment as Heron Clan representative in July of 2003, and at that time she appointed Mr. Karl Hill in his place and confirms Mr. Hill's present status as replacement for Mr. Halftown. Bear Clan Mother Jimerson confirmed the status of Mr. Samuel George and Mr. Chester Isaac as representatives of the Bear Clan.

Thus, the actions of the Clan Mothers resulted in the replacement of three representatives of their respective clans. The representatives appointed by the Clan Mothers then unanimously issued Cayuga Nation Resolution 11-001, announcing those changes and noted that Mr. Halftown and Mr. Twoguns were no longer the federal representatives of the Cayuga Nation. (Although Mr. Isaac's signature is missing from the resolution, his sworn affidavit indicates that he is in full agreement with the resolution. My understanding is that he participated in the meeting by telephone.)

The unanimity of the signatories of the resolution negates any need for discussion of consensus in this instance.

All three women have submitted affidavits as to their status and actions on May 31. Although the clients of Messrs. French & Alcott deny the validity of those actions, we note that neither party has ever denied the authority of Clan Mothers, under ancient Haudenosaunee custom, to choose clan representatives who sit on the Nation's Council. Nor has either party denied the legitimacy or status of the Clan Mothers involved in this matter. Recognition of Ms. Brenda Bennett as new Turtle Clan Mother (in the place of the late Ms. Lena Pierce) was duly noted on the Cayuga Nation's website. In fact, all three women's names appear as acknowledged Clan Mothers on the website. Ms. Hill and Ms. Jimerson, as well as Ms. Bennett's predecessor, are clearly acknowledged as such in the previous BIA decisions of March 15, 2006 and May 31, 2006 and the IBIA decision of May 4, 2009.

## **Decision**

Based on the foregoing, I conclude that the source of the changes outlined above was the action of each clan mother in carrying out her traditional clan responsibilities. I would be remiss if I failed to recognize the results of this exercise of ancient traditional authority by the Clan Mothers. As noted above, by Haudenosaunee tradition, the Clan Mothers are the persons tasked

with the responsibility of appointing representatives of their respective clans to serve on the Nation Council.

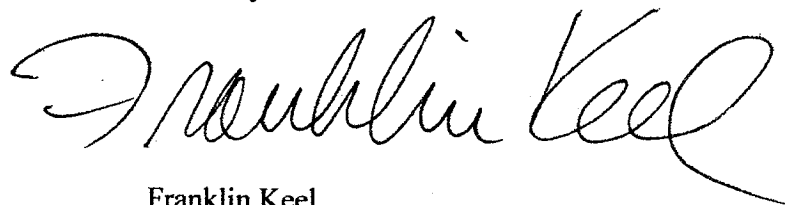
Therefore, for purposes of the government-to-government relationship between the United States and the Cayuga Nation, I recognize the Nation Council as set out in Cayuga Nation Resolution 11-001. Further, I recognize Mr. William C. Jacobs and Mr. Samuel George as the federal representatives designated by the new Nation Council.

### **Appeal Rights**

This decision may be appealed to the Interior Board of Indian Appeals, 801 North Quincy Street, MS-300-QC, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310 - 4.340. Your notice of appeal to the Board must be signed by you or your attorney and **must be mailed within 30 days of the date you receive this decision.** Your notice of appeal must be original; **no facsimile copies (faxes) will be accepted.** The notice of appeal should clearly identify the decision being appealed. If possible, attach a copy of the decision. You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 1849 C Street, N.W., MS 4141, Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board must certify that you have sent copies to these parties. If you are not represented by an Attorney, you may request assistance from this office in the preparation of your appeal. If you file a notice of appeal, the Board will notify you of further appeal procedures. **If a notice of appeal is not timely filed, this decision will become final for the Department of the Interior at the expiration of the thirty (30) day appeal period.** A timely appeal will stay this decision. No extension of time can be granted for the filing of the notice of appeal.

This document is being provided to all interested parties through their counsel.

Sincerely

A handwritten signature in black ink that reads "Franklin Keel". The signature is written in a cursive, flowing style with a long, sweeping tail on the letter "l".

Franklin Keel  
Director, Eastern Region