

August 5, 2014

**Dear Members of the Cree Nation Government:**

We, as fellow members of the Cree Nation Government, are asking for you to support the attached resolution concerning the education rights of Cree youth.

According to section 3.2.7 of the James Bay and Northern Quebec Agreement (JBNQA), a Cree beneficiary is entitled to exercise his or her rights and benefits under the JBNQA unless he or she “is absent from the Territory during ten continuous years and is domiciled outside the Territory.” This is known as the “10-year clause.”

The rights we as Cree beneficiaries enjoy under the JBNQA are Aboriginal and treaty rights protected under section 35(1) of the *Constitution Act, 1982*. The residency requirement in the 10-year clause can be challenged as an unconstitutional infringement of these rights. Specifically, the 10-year clause violates the equality rights of non-resident Cree beneficiaries, as guaranteed by section 15(1) of the *Canadian Charter of Rights and Freedoms*. (See, e.g., *Corbiere v. Canada* [1999] 2 S.C.R. 203, in which the Supreme Court of Canada held that the denial of voting rights to non-resident Band members is unconstitutional.)

In any event, even if we presume that the 10-year clause is constitutional, under its plain language, it does not affect the rights of a Cree beneficiary who is domiciled outside of Eeyou Istchee for 10 years or more unless the Cree beneficiary is also absent from Eeyou Istchee for the entire period. Put another way, the 10-year clause clearly was not intended to apply to Crees who maintain ties to Eeyou Istchee. In fact, a long-time attorney for the Crees, who was involved in the negotiations on the JBNQA, publicly confirmed at the Cree Nation Government Agreements Information Session in Val d’Or on October 30 and 31, 2013, that the 10-year clause was not intended to suspend the rights of Cree beneficiaries who do regularly return to Eeyou Istchee even while domiciled outside the area for 10 years or more.

The 10-year clause is being narrowly and inconsistently applied by Cree entities resulting in Cree beneficiaries being unfairly denied their rights and benefits under the JBNQA.

For example, Cree employees of the Grand Council of the Crees who have been domiciled outside of Eeyou Istchee for ten years or more while so employed, and their children, are considered eligible for post-secondary assistance from the Cree School Board. In contrast, Crees who are domiciled outside of Eeyou Istchee for 10 years or more who are only able to secure work as independent contractors with the Grand Council of the Crees, and their children, are considered ineligible for post-secondary assistance from the Cree School Board.

Many Crees, if not most, have members of our extended families who are directly affected by the 10-year clause. There are many compelling reasons why Cree beneficiaries may reside outside of Eeyou Istchee. There are individuals with special needs that cannot be met with the available resources in the Cree communities. There are chronic housing shortages and limited employment opportunities. There are social problems that may require an individual to move away to protect themselves or their children or to break free from unhealthy habits or relationships. There are choices we make freely out of a desire to seek out education, training and experiences not available in the communities or simply to honor our commitments to our partners in life.

We are all members of the Cree Nation of Chisasibi. In our family, there are five living adult siblings, all of whom have been domiciled for parts of their lives in Chisasibi, where their mother and grandmother still live. The three eldest of us were baptized on Fort George Island and attended residential school there. Only one of us currently lives in Eeyou Istchee. The remaining four of us have lived outside of Eeyou Istchee for more than 10 years. However, each of us, and our children, have returned to Eeyou Istchee on numerous occasions since moving away and have participated in social and cultural activities during these return visits. For example, all of our children, five in total, have had their Walking Out Ceremonies in Eeyou Istchee.

Of the four of us who live outside Eeyou Istchee, we have each followed different paths. One of us is an R.C.M.P. officer whose domicile is determined by her job posting (her last assignment was in Ottawa in a special unit dedicated to Aboriginal issues). The youngest of us is a researcher who moved to Ottawa to pursue post-secondary studies and remained there after marrying a U.S. citizen who was fortunate to be able to utilize his work experience in the U.S. to secure a position with a major retailer located in the U.S. and Canada. One of us is an environmental engineer who moved to Oshawa, Ontario to work with General Motors and has remained there since to pursue her career. One of us is an attorney who, after several unsuccessful attempts to secure employment with any of the Cree local or regional governments, moved to California to pursue a Masters of Law in Comparative Law for the purpose of comparing Aboriginal law in Canada with Indian law in the United States and has remained there while continuing to gain experience and further education and providing legal services on a contract basis to several Cree entities.

What the four of us non-resident siblings have in common, is that each of us was able to pursue our post-secondary studies because of the post-secondary assistance administered by the Cree School Board. Yet none of us are currently considered eligible for Cree School Board benefits under their interpretation of the 10-year clause. Nor are our children, two of whom have already applied for and been determined to be ineligible for such benefits.

This is because the Cree School Board's policy interpreting the 10-year clause requires that a Cree beneficiary have at least 183 continuous days of residence within Eeyou Istchee within the past 10 years at the time of their application (unless the applicant falls is an employee of a Cree public entity or a governmental agency providing services to Cree beneficiaries). There is no such requirement in the JBNQA. The 10-year clause only applies when a non-resident Cree beneficiary has been *absent* from Eeyou Istchee for 10 years or more.

The political leaders and attorneys for the Crees are quick to argue that federal and provincial agencies should interpret the James Bay and Northern Quebec Agreement in a broad and liberal manner and resolve any ambiguities in favor of the Crees. Shouldn't we expect the same of our own Cree governments and agencies?

We are entering a new era of self-government with the establishment of the Cree Nation Government. We must discard the remnants of the historic "divide and conquer" tactics of federal and provincial governments, such as narrow interpretations of the 10-year clause. These tactics create and perpetuate tensions between our peoples, promoting an "us" versus "them" mentality that divides us, such as resident versus non-resident Crees. When we as Crees fight against each other, we undermine our strength as local governments and as the Cree Nation Government and make ourselves vulnerable to external political powers. As we engage in nation-building, we must recognize that we are all in this together.

We Cree beneficiaries were guaranteed the rights and benefits under the JBNQA because of our ancestors' use and occupation of Eeyou Istchee since time immemorial. These rights and benefits are their legacy and our birthright. Imagine what our ancestors would think if they could see how we have become the masters of our own oppression by seeking to deny these rights to our Cree youth.

Our Elders teach us to act for the benefit of future generations when we make decisions. We must demand the same from our Cree governments and agencies. We are blessed with sufficient economic resources to ensure all Cree beneficiaries who wish to can receive post-secondary education assistance. In fact, according to the Cree School Board's Annual Report 2012-2013, they had an available surplus of over 8 million dollars as of June 30, 2012. If it is our will as a people to support higher education for all Crees, we have the sovereign authority to do so, without the need to seek approval or permission from the provincial or federal governments.

Why should our Cree youth be denied post-secondary education assistance or other JBNQA rights or benefits due to the residency choices of their parents? Isn't it in the interests of our Cree governments, our Cree communities, and our Cree families that Cree youth be educated regardless of their parents' domicile? or even regardless of the young person's chosen field of study? Should we not encourage our youth to pursue their dreams, wherever they may lead, be it as a professional hockey player, an overseas relief worker, an astronaut, or an actor? Don't these accomplishments, even if pursued outside of Eeyou Istchee, enrich our Nations?

The proposed resolution asks our Cree Nation Government to adopt a uniform interpretation of the 10-year clause that is consistent with both the language and the spirit and intent of the JBNQA, to ensure that Cree entities implement this interpretation, and to provide remedies for Cree beneficiaries who have been denied their rights and benefits under overly restrictive interpretations of the JBNQA. We urge you to vote in support of the proposed resolution.

Respectfully and jointly,

Janie & Roderick Pachano  
Sandra Willis  
Joanne Willis Newton  
Kelly (Willis) Beach  
Mark Pachano  
Tarynne Pachano  
Jenna Newton  
Jayme Newton

**GRAND COUNCIL OF THE CREES (EYYOU ISTCHEE)/  
CREE NATION GOVERNMENT**

**Annual General Assembly**

**Resolution 2014-XX: Resolution Regarding Adoption and Implementation of Uniform Interpretation of 10-Year Clause in Section 3.2.7 of the James Bay and Northern Quebec Agreement to Promote Education of Cree Youth**

**WHEREAS** the rights that Cree beneficiaries enjoy under the James Bay and Northern Quebec Agreement are constitutionally protected under section 35(1) of the *Constitution Act, 1982*, which recognizes and affirms the “existing aboriginal and treaty rights of the aboriginal peoples of Canada;”

**WHEREAS** section 3.2.7 of the James Bay and Northern Quebec Agreement, known as the “10-year clause,” reads as follows:

“In the event [a Cree beneficiary] is absent from the Territory during ten continuous years and is domiciled outside the Territory, such person shall not be entitled to exercise his rights or receive benefits under the Agreement. Upon such person re-establishing his domicile in the Territory, the right of such person to exercise his rights or to receive benefits under the Agreement shall revive.”

**WHEREAS** under the plain language meaning of the 10-year clause, a Cree beneficiary who is domiciled outside Eeyou Istchee for ten continuous years remains entitled to exercise his or her rights or receive benefits under the Agreement so long as he or she has not been absent from Eeyou Istchee for the entire period.

**WHEREAS** the 10-year clause was not intended to suspend the rights of Cree beneficiaries who maintain ties to Eeyou Istchee even while domiciled outside Eeyou Istchee for 10 years or more.

**WHEREAS** the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government consistently advocates for broad and liberal construction and interpretation of the James Bay and Northern Quebec Agreement in its dealings with the federal and provincial governments and agencies;

**WHEREAS** Cree entities and agencies should be held to the same standard of liberal interpretation and resolve any ambiguity in the scope and meaning of the 10-year clause in favor of non-resident Cree beneficiaries;

**WHEREAS** there is a lack of consistency amongst Cree entities and agencies in their policies interpreting the 10-year clause and establishing exceptions to it, resulting in non-resident Cree beneficiaries not having uniform access to the rights and benefits to

## PROPOSED RESOLUTION

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which they may remain entitled, including, but not limited to, education rights and benefits administered by the Cree School Board, such as post-secondary education assistance;

**WHEREAS**, pursuant to section 6 of an Act Respecting the Cree Nation Government, the objects of the Cree Nation government include the following: to advance the education of the James Bay Cree; to assist in the furtherance of education and youth training; to assist the James Bay Crees in the defence of their interests; and to deal with all persons in working toward the solution of problems of the James Bay Cree; and

**WHEREAS** our youth are the Cree Nation's most precious resource and it is in the social and economic interests of the Cree Nation, each of the individual Nations of Eeyou Istchee, and Cree families that we improve educational outcomes for our youth, including post-secondary graduation, regardless of domicile;

**IT IS RESOLVED** by the delegates of the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government 40<sup>th</sup>/37<sup>th</sup> Annual General Assembly

**THAT** the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government hereby adopts the following uniform interpretation of the 10-year clause:

1. A Cree beneficiary who is domiciled outside Eeyou Istchee for ten consecutive years remains entitled to exercise rights and receive benefits under the James Bay and Northern Quebec Agreement if he or she visits Eeyou Istchee during that period and has social, economic, political or cultural ties with his or her Cree community.
2. The 10-year clause is not triggered until a Cree beneficiary turns 18 years of age, as a person under 18 years of age is presumed to have little or no control over his or her domicile or the means to visit Eeyou Istchee independently. In other words, a Cree youth remains eligible to exercise rights and receive benefits under the James Bay and Northern Quebec Agreement until he or she turns 28 years of age and thereafter his or her eligibility is determined by the 10-year clause.

**THAT** the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government will forthwith take appropriate and necessary steps to work with Cree entities and agencies, including but not limited to the Cree School Board, to ensure prompt implementation of this uniform interpretation of the 10-year clause; and

**THAT** such implementation measures shall include retroactive remedial measures for Cree beneficiaries who were denied rights or benefits to which they were entitled under the James Bay and Northern Quebec Agreement under more restrictive interpretations of the 10-year clause, including post-secondary education assistance.

Carried: August \_\_, 2014

Proposed by:

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Seconded by:

**TIMELINE OF JENNA NEWTON’S RESIDENCY HISTORY AND CLAIM  
FOR CSB’S POST-SECONDARY EDUCATION ASSISTANCE PROGRAM**

<b>DATE</b>	<b>EVENT</b>
June 6, 1992	Jenna born in Ottawa, Ontario while mother, Joanne Willis Newton, attending University of Ottawa under CSB’s post-secondary education assistance program.
Summer 1992	Jenna’s first trip to Chisasibi.
Summer 1993	Jenna returns to Chisasibi with her family (has Walking Out Ceremony on Fort George Island).
Summer 1995	Jenna travels to Chisasibi with her family (dances at Pow Wow on Fort George Island, stays at great-grandparents’ camp).
August 1997	Jenna accompanies her family to California for mother’s completion of Masters degree at University of San Diego under CSB’s post-secondary assistance program. (Her mother continues legal education and training in California to present time.)
Summer 1998	Jenna returns to Chisasibi with her family (also stays at grandparents’ camp near LG-3).
Summer 2000	Jenna returns to Chisasibi with her family (engages in social and cultural activities).
2002 to present	Jenna’s mother successful in securing legal work on contract basis with Cree entities.
Winter Break 2002-2003	Jenna returns to Chisasibi with her family (engages in social and cultural activities).
June 2008	Jenna’s older sister, Jayme Newton, graduates secondary school in California and is determined by CSB’s Review Panel to be ineligible for CSB post-secondary assistance program.
Aug. 2008	CSB’s Appeal Board grants Jayme Newton’s appeal and decides she is eligible for post-secondary assistance program. Jayme begins studies at University of Alaska Anchorage.
Aug. 2009	CSB’s Council of Commissioners overrules Appeal Board’s decision (without any written policies or procedures supporting the action) and decides Jayme Newton is not eligible for post-secondary assistance benefits but that they will allow her to continue to receive benefits but only until April 2012 and only for current degree program.
Nov. 2009	Jayne Newton requests permission from CSB’s Council of Commissioners to transfer to a different university to complete same degree within allotted time for extraordinary health reasons.
Mar. 2010	Jayne Newton’s transfer request is denied by Council of Commissioners.
Apr. 6, 2010	Letter from Jenna Newton to CSB seeking early confirmation of eligibility if she were to return to Chisasibi in July 2010 with intent to establish residency and to find summer employment.
Apr. 14, 2010	Response from CSB to Jenna Newton: “We encourage you to submit a completed application .... Your application will be examined by the Review Panel to determine eligibility....”
June 2010	Jenna graduates High School in California and turns 18.
July 2010	Jenna arrives in Chisasibi and establishes residency (e.g., lives with grandparents, opens bank account, worked part-time for James Bay Cree Cultural Center, voted in CNC’s general election, attended portion of CNC General Assembly, spent time at grandparents’ camps).
Aug. 2010	Jenna attends University of California Berkeley.

Dec. 2010	Jenna receives award from CRA Board of Compensation for academic excellence for secondary school studies.
Dec. 2010	Jenna starts air travel to Chisasibi from California during winter break but turns back after arriving in Montreal and receiving notice that her paternal grandmother has taken a bad turn in her battle with cancer in Colorado hospital and flies to Colorado for Christmas instead.
Mar. 2011	Jenna applies for CSB's post-secondary education assistance program for 2011-2012 year.
Jun. 2011	Director of Post Secondary Student Services (PSSS), Pauline Trapper-Hester, writes letter to Jenna stating Council of Commissioners has decided she is ineligible and she may appeal by letter addressed to the Director of PSSS. [Letter mailed after June 30 deadline to apply for INAC funds.]
July – Aug. 2011	Jenna lives with grandparents in Chisasibi (works for Cree business, camps at grandparent's cabin, helps with cousin's Walking Out Ceremony)
Aug. 2011	Jenna appeals Council of Commissioner's decision to Director PSSS but appeal is submitted to Review Panel for reconsideration based on new information submitted.
Dec. 2011	Interim Director PSSS, Jane Blacksmith, writes letter to Jenna stating Council of Commissioners decided Jenna is ineligible and that Jenna may appeal by letter addressed to Interim Director PSSS. [Letter issued after Oct. 30 deadline to apply for INAC funds.]
Feb. 2012	Jenna appeals again by letter to Interim Director PSSS, Jane Blacksmith.
Mar. 2012	Jenna submits second application for CSB post-secondary education assistance program for 2012-2013 year.
July 2012	Interim Director PSSS, Jane Blacksmith, emails Jenna informing her that Review Panel determined her to be ineligible and Council of Commissioners denied her application for 2012-2013 year. [Notice issued after June 30 deadline to apply for INAC funds.] Jenna immediately appealed.
July 2012	Interim Director PSSS, Jane Blacksmith, confirms that Jenna's pending appeal for the 2011-2012 year and the current appeal for the 2012-2013 year will be presented to Director General, Mr. Jolly, in August 2012, as he was acting in lieu of the Appeal Board, which had recently been abolished.
Aug. 2012	Interim Director PSSS, Jane Blacksmith, emails Jenna informing her that her appeals will be presented to the Review Panel.
May 2013	Jenna graduates university in three years with B.A. English.
Aug. 2013	Jenna starts teacher credential and Masters of Education program at San Francisco State University.
Aug. 2013	CSB's Director General, Abraham Jolly, writes letter to Jenna affirming decisions of Council of Commissioners and that decision is final.
Nov. 2013	Jenna writes to GCC(EI)/CRA Boards asking for assistance in resolving claim. (No response received to date.)
Fall 2013	Jenna receives awards from Board of Compensation and Cree Nation of Chisasibi for obtaining B.A. English with academic excellence.
July 2014	Jenna writes to GCC(EI)/CNG asking for resolution to be added to Agenda of Annual General Assembly.



## TIMELINE OF JOANNE WILLIS NEWTON'S RESIDENCY AND WORK WITH CREES

Note: Joanne Willis Newton is a member of the Cree Nation of Chisasibi and Jenna Newton's mother. This information is relevant because the CSB's denial of benefits to Jenna was based on Joanne's residency and work history. The CSB's policy on the 10-year clause provides that the domicile of a Cree beneficiary under age 18 is that of the parent or guardian with whom the child resides. The policy also contains a residency exception for employees of Cree public entities and other government agencies that serve Cree beneficiaries, but excludes individuals who work as independent contractors for such entities and agencies.

DATE	EVENT
Dec. 8, 1965	Joanne born in California.
July 1966	Joanne's first trip to Fort George (baptized at St. Phillip's Anglican Church and introduced to extended family, including great-grandmother Hannah Matthew and grandmother Juliet Iserhoff).
Summers 1968-1972	Joanne returns to Fort George with family every other summer (engages in traditional activities).
Fall 1973	Joanne moves with family to Ottawa, where mother Janie Pachano (then Jane Willis) is promoting her autobiography about childhood in residential school and working with Crees on matters relating to JBNQA negotiations.
Spring 1974	Joanne moves to Fort George with mother and siblings after her parents separate.
Summer 1974	Joanne begins attending Catholic residential school at Fort George while mother continues working for Crees.
Dec. 1975	Joanne visits her father in California for Christmas and he retains physical custody without her mother's consent.
1977-1983	Joanne returns regularly to Fort George and Chisasibi during summer and winter breaks under shared custody arrangement between parents.
June 1983	Joanne graduates high school in California with honors. Arrangements secured to move away from home and attend University of California Santa Cruz for pre-law program with CSB post-secondary education assistance.
Sept. 1983	Joanne's high school sweetheart critically injured in car accident on eve of her departure for Santa Cruz. She notifies CSB that she declines assistance as she is going to remain at home and attend local community college to support boyfriend with his physical recovery.
Aug. 1985	Joanne marries high school sweetheart in California and starts attending University of Ottawa with CSB's post-secondary assistance program.
1985-1999	Joanne returns regularly to Chisasibi once or twice a year during summer and winter breaks.
1988	Joanne obtains B.Sc. Biology with honors from University of Ottawa and applies unsuccessfully to several Canadian medical schools with intent to work as a doctor with Cree Health Board.
1989	Joanne obtains B.A. Psychology with honors from University of Ottawa and reapplies unsuccessfully to several Canadian medical schools. Also applies unsuccessfully to Cree School Board for teaching position. Joanne starts law school at University of Ottawa in September with intent to focus on Aboriginal law and work for Crees.
Oct. 1990	Joanne's daughter Jayme Newton born.
Early 1992	Joanne applies unsuccessfully for articling position with several law firms that provide legal services to Crees.
June 1992	Joanne's daughter Jenna Newton born. Joanne graduates with LL.B. from University of Ottawa's School of Law.

1993-1994	Joanne Willis Newton works for 12 months as an articling student with Department of Justice Canada, including assignments in Department of Indian and Northern Affairs and Human Rights Division.
1994-1995	Joanne applies unsuccessfully for employment with GCCQ/CRT. Provides legal research and writing services to CSB and research and writing services to James Bay Cree Cultural Education Center on an independent contractor basis.
1995	Joanne admitted to Law Society of Upper Canada (i.e., the Ontario Bar). Re-applies to GCCQ/CRA for employment as attorney. Contacts then Grand Chief Matthew Coon Come by phone to pursue employment; he tells her they need lawyers who can practice in Quebec.
1995-1998	Joanne unsuccessfully attempts to secure employment as attorney for Cree Nations. Works as independent contractor providing legal research and writing services on Aboriginal affairs issues for Deborah Hawken's law firm in 1995, Department of Indian Affairs and Northern Development 1994-1996, Department of Justice Canada 1996-1998. Also served as Corporate Secretary for James Bay Cree Cultural Education Center 1996-1997.
Aug. 1997 – May 1998	Joanne attends University of San Diego and obtains LL.M. Comparative Law with honors with CSB's post-secondary education assistance. Focused studies on comparing U.S. Indian law with Canada's Aboriginal law. Volunteers for California Indian Legal Services during the school year.
1998	After 2 years of efforts to pass law exams and French language competency exam, Joanne admitted to Barreau du Quebec. Re-applies unsuccessfully to Cree Nations and to GCCQ/CRA for employment as attorney. Summer trip to Chisasibi with daughters.
1998-1999	Joanne works for California Indian Legal Services in a 12-month Legal Fellow job while studying for the California State Bar exam with CSB post-secondary assistance for cost of bar exam. Admitted to California State Bar June 1989.
1999-2002	Joanne accepts employment with California Indian Legal Services as a Staff Attorney and is promoted to Senior Staff Attorney in 2001. Summer trip to Chisasibi with daughters summer 2000.
2002	Joanne re-applies unsuccessfully for employment as an attorney with Cree Nations and GCCQ/CRA. Christmas trip to Chisasibi with family.
2002-2005	Joanne continues to work at California Indian Legal Services and is promoted to Directing Attorney position in 2003. Secures some legal work with Cree entities as independent contractor, involving some travel to Eeyou Istchee.
Oct. 2005-present	Joanne leaves California Indian Legal Services and establishes solo law practice specializing in Canadian Aboriginal rights, U.S. Indian law and U.S. tribal law. Provides legal services to several Cree entities, involving periodic travel to Eeyou Istchee.
2008-2010	Joanne serves as first Chief Judge of the San Manuel Tribal Court in California.
2009-2011	Joanne completes Professional Certificate in Judicial Development, Tribal Judicial Skills, at Nat'l Judicial College in Nevada.
2010-present	In April 2010, Joanne appointed to serve as volunteer judge with Intertribal Court of Southern California, which she continues to do. After youngest child reaches adulthood, Joanne returns each summer for extended stay in Chisasibi.
May 2011	Joanne unsuccessfully applies to GCC(EI)/CRA for employment on Cree Justice project.
2010-2013	Joanne assists Jenna Newton, as Jenna's parent, in her appeals of the CSB's denial of Jenna's application for post-secondary education assistance benefits. Joanne's attempts, as Jenna's attorney, to resolve Jenna's claim of wrongful denial of her JBNQA benefits with attorneys for CSB from July to October 2013 but is unsuccessful.