MKO Child Welfare Secretariat (CWS)

Summit

On First Nations Exercising Jurisdiction Over Child Welfare

"Empowering Our Children's Footsteps"

Implications of Bill 41- Amendments to the Child and Family Services Act

October 17 and 18, 2022
Canad Inns Garden City
Winnipeg, Manitoba

Presentation by:
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Overview of Presentation

- ❑ Role of the MKO Child Welfare Secretariat
- ❑ MKO Chiefs Task Force on Child Welfare
- ❑ MKO Response to Bill 41 – The Child and Family Services Amendment Act

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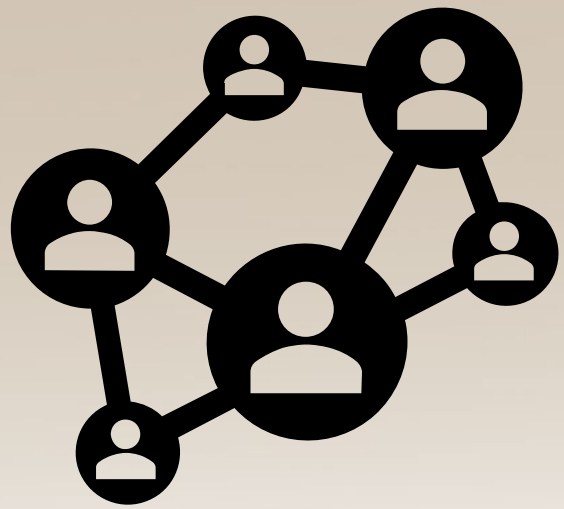
Role of the Child Welfare Secretariat



- As directed by the MKO Chiefs-in-Assembly, the primary role of the Child Welfare Secretariat (CWS) is to:
- Lobby, advocate and support MKO leadership and communities in child welfare, including exercising jurisdiction and legislative authority.
- The CWS provides advocacy and support to First Nations children, youth, and families. The Geographic area are not limited to Manitoba, as our members reside in other provinces and territories.

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Key Functions

- Providing advocacy and technical support to MKO leadership and communities.
- Legislation and standard development
- Research and analysis
- Policy and proposal development
- Advocacy and support to First Nations children, youth and families
- Community consultations and engagement
- Participation on advisory and technical committees representing northern Manitoba

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MKO Chiefs Task Force on Child Welfare

- In October 2021, the MKO Executive Council adopted the motion to establish a Task Force on Child Welfare Transformation.
- In November 2021, the MKO Chiefs in Assembly appointed Chiefs to the Task Force (Resolution #2021-11-09). The Task Force is comprised of the following representatives.
  - Chief Shirley Ducharme, O-Pipon-Na-Piwin Cree Nation
  - Chief Larson Anders, Norway House Cree Nation
  - Chief Betsy Kennedy, War Lake First Nation
  - Chief Evan Yassie, Sayisi Dene First Nation
  - Chief Doreen Spence, Tataskweyak Cree Nation
  - Three staff from the MKO Child Welfare Secretariat
  - The MKO Grand Chief is an ex-officio member of the Task Force.

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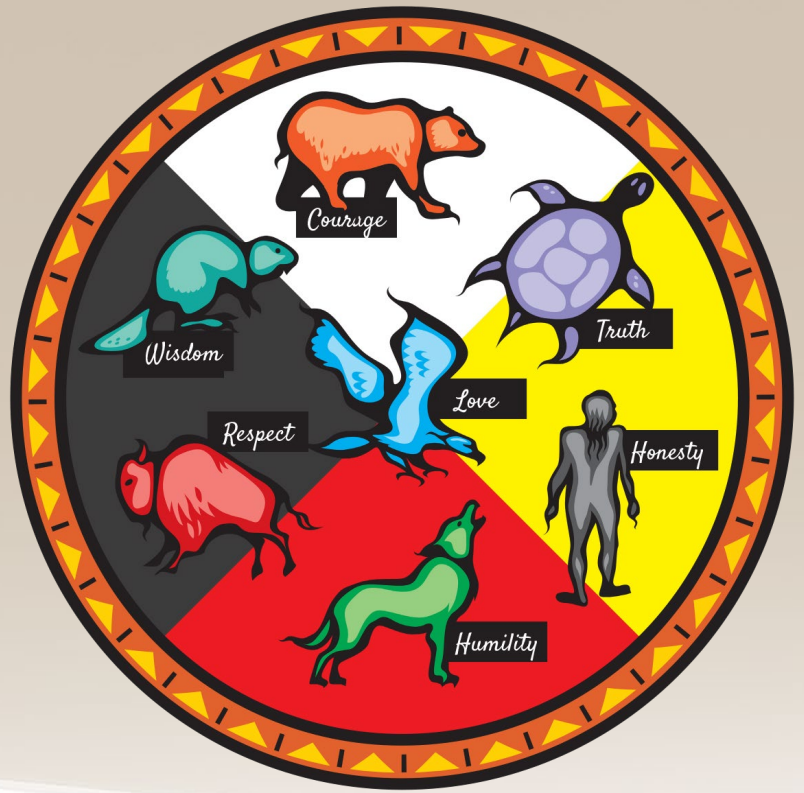
MKO Chiefs Task Force on Child Welfare



The mandate of the Task Force is to assert the self-determination of sovereign First Nations and affirm their inherent right of self-government in relation to child and family matters.

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MKO Chiefs Task Force on Child Welfare

Response to Bill 41 – The Child and Family Services Amendment Act

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Background

- On January 1, 2022, the federal law*, An Act respecting First Nations, Inuit and Metis children, youth and families* came into effect.
- The Federal Act formally affirms the jurisdiction of any Indigenous group, community or people to pass and enforce laws related to the provision of child and family services to their members and citizens.

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Background

The federal Act creates a process by which an Indigenous Governing Body (IGB), on behalf of an Indigenous group, community or people, may give notice of their intention to exercise that legislative authority in relation to child and family services, and to enter into a coordination agreement with Canada and a province.

On May, 2022, the Minister of Families, Rochelle Squires, introduced Bill 41 – The Child and Family Services Amendment Act – in the Manitoba legislature.

On June 1, 2022, Bill 41 received Royal Assent and came into force

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Purpose – Bill 41

The Purpose of the amendments to *The Child and Family Services Act* (CFS Act) are to authorize and facilitate collaboration and information sharing between the persons and entities who administer the CFS Act and the IGBs and Indigenous service providers (ISPs) who administer Indigenous laws respecting child and family services.

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Summary of Amendments – Bill 41

The amendments include four key areas:

1. Access to information
2. Transferring Service Responsibility
3. Authorization
4. Protections
5. Other amendments

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MKOs Concerns Regarding the Process

- MKOs initial concern was the Bill was rushed through the Manitoba Legislature and there was no opportunity for the public to provide input.
- Typically, there is a period for the public to express any concerns and provide feedback.

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MKO Concerns Regarding the Process

On June 2, 2022, our MKO Grand Chief Settee addressed a letter to Minister Squires indicating MKO and First Nations were not properly consulted on the Bill prior to it receiving Royal Assent and coming into force.

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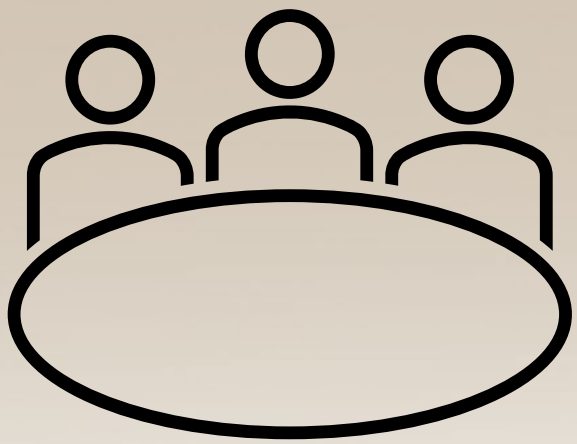
MKO Concerns Regarding the Process



In response, the MKO Chiefs Task Force on Child Welfare called a meeting with Minister Squires on June 13, 2022, to discuss the implications of Bill 41.

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Meeting with Minister Squires – Bill 41

- At this meeting, the Minister explained Bill 41 was introduced quickly to accommodate IGBs in Manitoba.
- The Minister indicated the current child welfare legislation did not permit the sharing of relevant CFS information to IGBs.
- At this meeting, there was agreement by the Minister to ensure that MKO is included in all future discussions regarding First Nation exercising jurisdiction over child welfare.

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Critique of Bill 41

The MKO Chiefs Task Force sought a legal opinion from Mack Law Corp on the potential implications of the amendments to the CFS Act.

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Critique of Bill 41

The amendments to the CFS Act are reactive and limited in scope; they do not include broad language about enabling, recognizing, or upholding inherent or treaty rights and authority of First Nations. Nevertheless, this is a step in the direction of support.

The legislative amendments provide support for information sharing and systems access, which is crucial for planning and collaborating.

But at a level that is similar to that which is currently provided to Agencies; one that is already limiting, extensively reliant on the discretion of the Director under the CFS Act, and

Not fully reflective of or responsive to the recognition of First Nations' jurisdiction that needs to occur.

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Critique of Bill 41

While open files and intake files appear to be included in the scope of the legislation, it is not clear if all information pertaining to the child and families of a given First Nation will be shared.

Closed filed and files relating to special needs, youth justice, or other program areas are not likely to be shared.

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Critique of Bill 41

- The Quebec Court of Appeal reference decision on the federal child welfare legislation is pending before the Supreme Court of Canada, with a hearing date of December 7, 2022.
- This case involves the affirmation of jurisdiction and rights, and the extent to which Indigenous peoples' rights and laws override or take precedence over provincial laws and policies.

  It is based on provisions of the federal Act.

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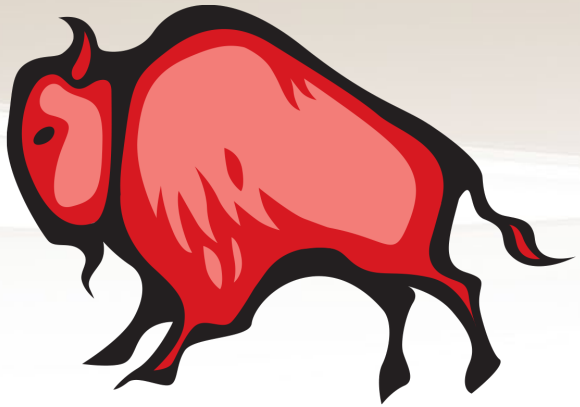
Critique of Bill 41

- Provincial jurisdiction in Manitoba, like elsewhere, over First Nations was given by the federal government through the Indian Act, section 88. Provincial laws are incorporated into federal law and therefore have a unique status.
- However, if the Supreme Court of Canada rules on inherent rights and authority, the Province's authority and scope to regulate First Nations will shift, and this will impact the right to information, data sharing, and likely require a further examination of the legislation in Manitoba.



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Critique of Bill 41

- Access to information about children, families, and previous services are important for planning, reconnecting families and children, and file transfers to First Nation authorities.
- It is likely there are limitations in the legislation that will be revealed, especially with the limited scope of access to intake and open files, and this may cause problems for planning, jurisdiction, and coordination.

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Critique of Bill 41

- Despite some initial concerns in the process, MKO acknowledges that Bill 41 is a step forward in Manitoba.
- The step is modest and has some limitations.
- However, upcoming cases, including the Supreme Court of Canada review of the Quebec Reference on the constitutionality of the federal Act may point in a different direction for the reform of provincial laws and policies.

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Current Status – Bill 41

- On July 8, 2022, Minister Squires addressed a letter to Grand Chief Settee regarding further engagement on the legislative amendments to the CFS Act to support Indigenous jurisdiction for child and family services.
- The Minister noted these amendments were brought into force quickly to address urgent matters required to support the realization of Indigenous jurisdiction for child and family services.
- She indicated, while their government was pleased to bring forward these critical amendments, they have heard concerns about the lack of engagement and so they are striving to enhance this in future phases of the legislative amendment work.

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Current Status – Bill 41

- In addition, the Minister indicated the Department of Families is planning to establish a technician's table, comprised of representatives from the Indigenous Representative Organizations, including MKO, to inform proposed amendments to provincial child and family services legislation.
- The first meeting of the Technician Table on Provincial Child Welfare Legislative Amendments was held on August 11, 2022.
- The second meeting was held on September 15th.

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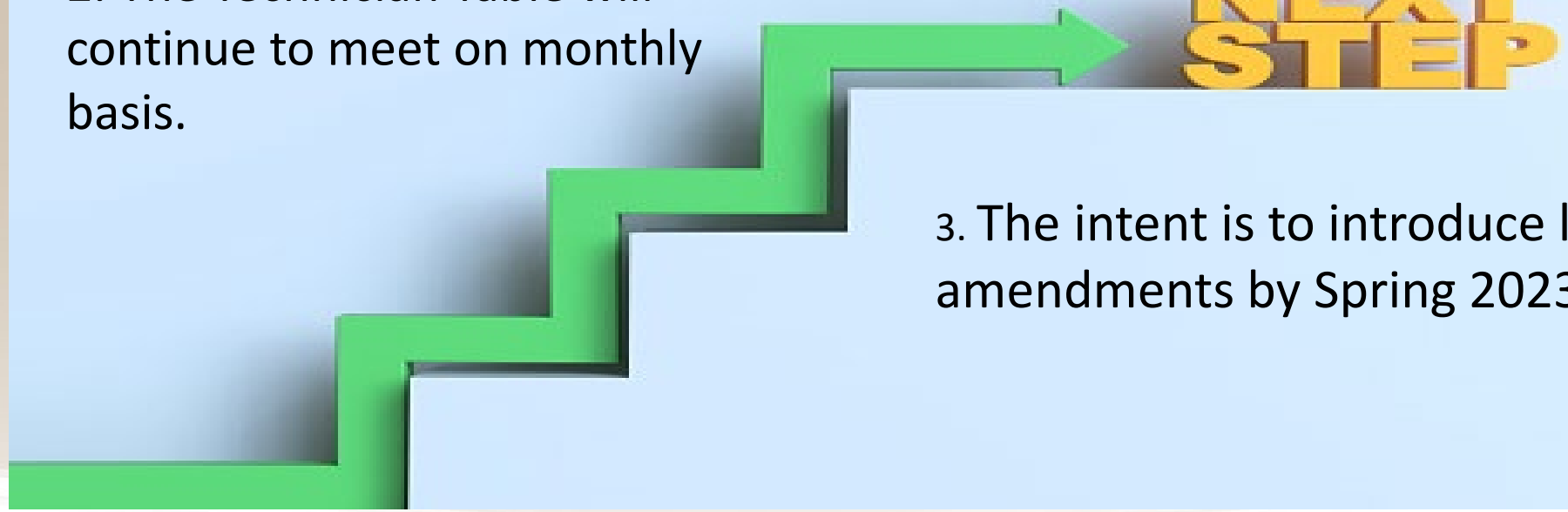
Next Steps – Bill 41

1. The next meeting dates are set

2. The Technician Table will continue to meet on monthly basis.



3. The intent is to introduce legislative amendments by Spring 2023.

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