

# Child Welfare Secretariat

# Annual Report

## 2020-21

FOR THE YEAR ENDING  
MARCH 31<sup>ST</sup>, 2021



It-To-Ta-Maso-Wak

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## DOING IT OUR WAY

PREPARED FOR THE  
**MKO ANNUAL GENERAL  
ASSEMBLY** ON AUGUST 17-19, 2021  
KINOSAO SIPI (NORWAY HOUSE)



Manitoba  
Keewatinowi  
Okimakanak Inc.



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*As directed by the MKO Chiefs-in-Assembly, the primary role of the MKO Child Welfare Secretariat (CWS) is to provide advocacy and technical support to the MKO leadership and communities in child welfare, including exercising jurisdiction and legislative authority. The CWS also provides advocacy and support to First Nations children, youth and families who are involved in the child welfare system in Manitoba, as well as other provinces and territories.*

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The key functions of the CWS include:

- Providing advocacy and technical support to the MKO leadership and communities
- Legislation and standards development
- Research and analysis
- Policy and proposal development
- Advocacy and support to First Nations children, youth and families
- Community consultation and engagement

Over the past year, despite the challenges associated with the COVID-19 pandemic, the CWS has undertaken the following major activities.

## FEDERAL CHILD WELFARE REFORM .....

### **Federal Legislation on Indigenous Child Welfare**

The Government of Canada co-developed, with Indigenous peoples, provinces and territories, new legislation with the intent to reduce the number of Indigenous children and youth in care and improve child and family services. On January 1, 2020, the federal law, An Act respecting First Nations, Inuit, and Metis children, youth and families (the Act), came into effect. The purpose of the Act is to:

- Affirm the inherent right of self-government for Indigenous peoples, which includes jurisdiction in relation to child and family services.
- Contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
- Set out principles, as well as minimum national

standards that must be adhered to in the delivery of child and family services for all Indigenous children in Canada regardless of their residence.

- Provide a framework and pathway for Indigenous peoples to establish their own laws for child welfare.

Under the Act, an Indigenous Governing Body (IGB) is defined as a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.

Under section 20 of the Act, there are two options for an IGB, which has developed its own legislation, to exercise their jurisdiction over child and family services: 1) give notice of intention to exercise legislative authority; and 2) request to enter into a coordination agreement.

As of March 31, 2021, according to Indigenous Services Canada (ISC), across Canada, 38 IGBs have either given their notice of intention to exercise legislative authority or requested to enter into a coordination agreement.

### In Manitoba:

- Three IGBs have given their notice of intention to exercise legislative authority.
  - Sioux Valley Dakota Nation
  - Fisher River Cree Nation
  - Pimicikamak Okimawin
- Five IGBs have requested to enter into a coordination agreement.
  - Manitoba Métis Federation
  - Island Lake Tribal Council
  - First Nations in Treaty 2 Territory
  - Opaskwayak Cree Nation
  - Peguis First Nation

On February 4, 2021, the MKO Executive Council adopted the motion to support the CWS being named the IGB for any MKO First Nation that chooses to do so under the Act.

For the purposes of the federal Act, Shamattawa First Nation authorized the CWS to act as the IGB on behalf of the community. Under section 12 of the Act, all notices of significant measure (including child apprehension) regarding Shamattawa First Nations children must be sent by a service provider to the CWS.

### Federal Funding to Support the Implementation of the Act

In July 2020, the Government of Canada announced a funding commitment of \$542 million over five years, starting in 2020-21, to support the implementation of the Act. This includes:

- \$425 million over five years for capacity-building funding for Indigenous jurisdictions.

- Nearly \$73 million over five years for coordination agreement discussions.
- Over \$35 million for internal services.
- Nearly \$10 million over two years for governance engagement mechanisms.

In March 2021, as part of the \$542 million, ISC announced funding is available through a proposal process for Indigenous communities to build capacity in preparation for exercising jurisdiction over child and family services.

Under the ISC criteria, in 2021/22, up to \$650,000 may be available to a remote community and up to \$550,000 may be available to a non-remote community. The CWS is available to assist the MKO leadership and communities in developing proposals at their request. There is currently no deadline to apply and applications will be accepted on an ongoing basis. The CWS continues to provide technical support to the MKO leadership and communities regarding the federal Act and its implementation.

### Community Well-Being and Jurisdiction Initiatives

In 2018, the federal government allocated funds to a new Community Well-Being and Jurisdiction Initiative (CWJI) funding stream as part of the ongoing efforts toward reforming the Child and Family Services Program. The CWJI funding stream supports First Nations in two areas:



1) Community Well-Being:

- o Supporting First Nation communities in the development and delivery of prevention services that help families at risk stay together

2) Jurisdiction:

- o Supporting First Nations to exercise their jurisdiction for child and family services

In Manitoba, since 2018, the CWJI allocation for First Nations communities is \$15.3M annually until the end of March 2023. As well, the CWJI funding is over and above the prevention funding provided to First Nation Child and Family Services Agencies.

In 2020/21, the CWS continued to work with ISC in the allocation of CWJI funds to MKO communities, as well as assisting them in developing CWJI funding proposals.

**PROVINCIAL CHILD WELFARE REFORM**

In October 2017, the Government of Manitoba announced its commitment to develop a comprehensive plan to address the crisis in child welfare and to act on the many outstanding reports and recommendations to achieve better outcomes for children. The plan for reform included four major pillars.

1) Community Based Prevention

- o Integration of resources to better support prevention activities at the community level

2) Lifelong Connections Through Reunification and Permanence

- o Introduce customary care
- o Reform emergency placement resources
- o Introduce other permanency options, such as subsidized guardianship

3) Funding for Results

- o Block funding pilots with CFS Agencies to create flexibility for enhanced prevention

4) Legislative Reform

- o Modernize The Child and Family Services Act
- o Review The Child and Family Services Authorities Act
- o Amend legislation to support permanency options, such as customary care

In February 2020, Manitoba Families provided an update on the provincial child welfare reform, referencing their four pillars.

Under the pillar of Community-Based Prevention, in response to growing pressure from Indigenous leadership, including MKO, Manitoba Families discontinued the practice of birth alerts in July 1, 2020. A new emphasis is now placed on shifting supports toward voluntary prevention planning with families



during pregnancy, including referrals to community/cultural-based prevention and health service providers. This new practice is consistent with the federal law, An Act respecting First Nations, Inuit, and Metis children, youth and families.

Under the pillar of Funding for Results, Manitoba Families implemented a new funding approach called Single Envelope Funding (formerly called Block Funding). As of January 1, 2020, all CFS Agencies were receiving their provincial funding through their mandating CFS Authority. Manitoba Families and the CFS Authorities continue to work together in finalizing multi-year Single Envelope Funding contribution agreements. A new Single Envelope Funding Manual is also being developed which is intended to be less prescriptive and more flexible than the Child Maintenance Manual. It is intended to enable the CFS Authorities to set their own policies.

### **Customary Care**

Under the pillar of Legislative Reform, Manitoba Families maintains it is committed to modernize The Child and Family Services Act. Regarding customary care, Bill 18, The Child and Family Services Amendment Act (Taking Care of Our Children) received Royal Assent on June 4, 2018. The amendments are meant to establish a legislative basis for supporting the provision of customary care to Indigenous children through agreements and living arrangements. The Customary Care Regulatory Working Group was established in 2018 to develop regulations to support the customary care legislation. The new legislation will not come into effect until the regulations are completed and endorsed by leadership. This work remains in progress.

As of March 31, 2021, the provincial legislative reform timelines remain to be determined as a result of the federal Act, which came into effect on January 1, 2020. Amendments to provincial child welfare laws will need to be harmonized with the federal Act. Until First Nation laws come into effect, the CWS, under the direction of the MKO leadership, will continue to urge the provincial government to amend the provincial laws to be consistent with the federal Act.

### **Leadership Council**

In Manitoba, the Leadership Council was established through proclamation of The Child and Family Services Authorities Act in 2003. It consists of the following members: the Minister of Families; the Minister of Aboriginal and Northern Affairs; the Grand Chief of SCO; the Grand Chief of AMC; the Grand Chief of MKO; the President of the MMF; and a Métis woman designated by the MMF. The role of the Leadership Council is to provide a forum to discuss issues related to child and family services. MKO Grand Chief Settee continues to build a strong collaborative relationship with the Leadership Council.

In January 2021, the Honourable Rochelle Squires was appointed the new Minister of Families under the Government of Manitoba. On March 1, 2021, MKO Grand Chief Settee and the CWS Director met virtually with the Minister to discuss issues related to child welfare and legislative reform. It is anticipated further meetings will be scheduled to address the Government of Manitoba's commitment to the child welfare reform.

## **NATIONAL ADVISORY COMMITTEE ON FIRST NATIONS CHILD AND FAMILY SERVICES PROGRAM REFORM**

The National Advisory Committee (NAC) on First Nations Child and Family Services Program Reform is a joint advisory body consisting of representatives, including regional First Nations child welfare experts, the Assembly of First Nations, the First Nations Child and Family Caring Society, and the Government of Canada.

On February 23, 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society filed a Canadian Human Rights complaint alleging Canada is discriminating against First Nations children in the provision of on-reserve child welfare. On January 26, 2016, the Canadian Human Rights Tribunal confirmed that the federal government is discriminating against First Nations children. AFN

Resolution 62/2016 mandated the AFN to re-establish the NAC with the goal of advising on the reform of the First Nations Child and Family Services Program.

In 2020/21, the MKO CWS Director continued in her role as the Manitoba representative on the technical working group for child welfare. During the year, several virtual meetings were held by the working group, including meetings to plan the Virtual Leadership Gathering on First Nations Child and Family Services and Self-Determination conducted in January to April 2021. During this period, five virtual workshops were hosted by AFN regarding the federal Act, which included presentations by subject matter experts.

## **REGIONAL ADVISORY COMMITTEE ON FIRST NATIONS CHILD AND FAMILY SERVICES . . . . .**

In June 2000, the AFN and the Department of Indian Affairs and Northern Development published a report entitled Joint National Policy Review on First Nations Child and Family Services. The report issued 17 recommendations focusing on reforming funding for First Nations child and family services. In addition, it identified the need for regional tripartite tables to be established across Canada. In Manitoba, the Regional Advisory Committee on First Nations Child and Family Services (RAC) was established in 2001.

The RAC is comprised of representatives from the provincial and federal governments, the First Nations

CFS Authorities and Agencies, as well as the Assembly of Manitoba Chiefs (AMC), the Southern Chiefs' Organization (SCO), and MKO. Three staff from the CWS participate at this table.

The RAC, which is chaired by an ISC representative, meets at least six times during the year and is responsible for hosting the Annual North/South Gathering on First Nations Child and Family Services in Manitoba. The RAC hosted the 9th Annual Gathering on February 25-27, 2020. Due to the COVID-19 pandemic, options for the Gathering in 2021/22 are still being considered.

## **CHILD WELFARE TECHNICAL WORKING GROUPS . . . . .**

The CWS continues to participate in several technical working groups on child welfare. These working groups include representatives from other organizations, including AMC, SCO, ISC, Manitoba

Families, and the First Nations of Northern Manitoba CFS Authority (Northern Authority).

## **MANITOBA ADVOCATE FOR CHILDREN AND YOUTH . . . . .**

The Office of the Children's Advocate was established in 1992. The duties of the Children's Advocate included representing the rights, interests and views of

children receiving or entitled to receive services under The Child and Family Services Act and The Adoption Act.



On March 15, 2018, The Advocate for Children and Youth Act was proclaimed. The Child Advocate became known as the Manitoba Advocate for Children and Youth (the Manitoba Advocate) and the powers of the office were expanded. The first phase of The Advocate for Children and Youth Act came into force in 2018, which enabled the Manitoba Advocate to investigate child welfare and adoption services for children, and transitional child and family services for young adults. Effective June 1, 2021, the Manitoba Advocate will also have the authority to review and investigate serious injuries and deaths of children who were receiving services or whose families were receiving services related to mental health, addiction or youth justice in the year before their death or serious injury.

On March 11, 2021, the Manitoba Advocate released a special report on child maltreatment called Still Waiting: Investigating Child Maltreatment after the Phoenix Sinclair Inquiry. The report examines the lives of 19 children who died after being severely maltreated while under the age of five during the period 2008 and 2020. The Manitoba Advocate issued five recommendations focusing on improving programs and services for children at the systems level, community level, organizational level, and direct service level.

On March 25, 2021, the Manitoba Advocate released a special report on disability services called Bridging the Gaps: Achieving Substantive Equality for Children with Disabilities in Manitoba. The report is guided by the rights of children with disabilities and prompted



by the death of a child with disabilities in 2017. The Manitoba Advocate issued nine recommendations focusing on improving supports and services for children living with a disability and their families.

In response to the reports issued by the Manitoba Advocate, the CWS continues to inform the MKO leadership. As well, the CWS is working to ensure the recommendations are implemented through a collaborative process involving the relevant organizations, including MKO and the Northern Authority to ensure the best interests of the children, youth and families of the MKO communities are met.

## MKO FIRST NATIONS FAMILY LAW

In 1998, the MKO Chiefs called for the development of a legislative framework for First Nations child and family services. In 1999, following a consultation process, the draft MKO Family Law called, Minisiwin Winiswaywin, was created and endorsed by the MKO Chiefs in Assembly. Between 2000 and 2018, the CWS continued to develop the draft MKO Family Law in

consultation with the MKO leadership.

On June 21, 2019, Bill C-92, An Act respecting First Nations, Inuit, and Metis children, youth and families became law. In November 2019, the CWS was directed to update the draft MKO Family Law in relation to Bill C-92. On January 1, 2020, the federal law, An Act respecting First Nations, Inuit, and Metis

children, youth and families (the Act), came into effect. The Act enables First Nations to develop their own laws for child welfare.

Since 2020, as directed by the MKO leadership, the CWS continues to develop the draft MKO Family Law in relation to the federal Act and create a template law for all MKO communities to adopt if they choose. The

CWS continues to collaborate with Mack Law Corp in developing the draft MKO Family Law. In March 2021, a fourth draft of the MKO Family Law was being developed.

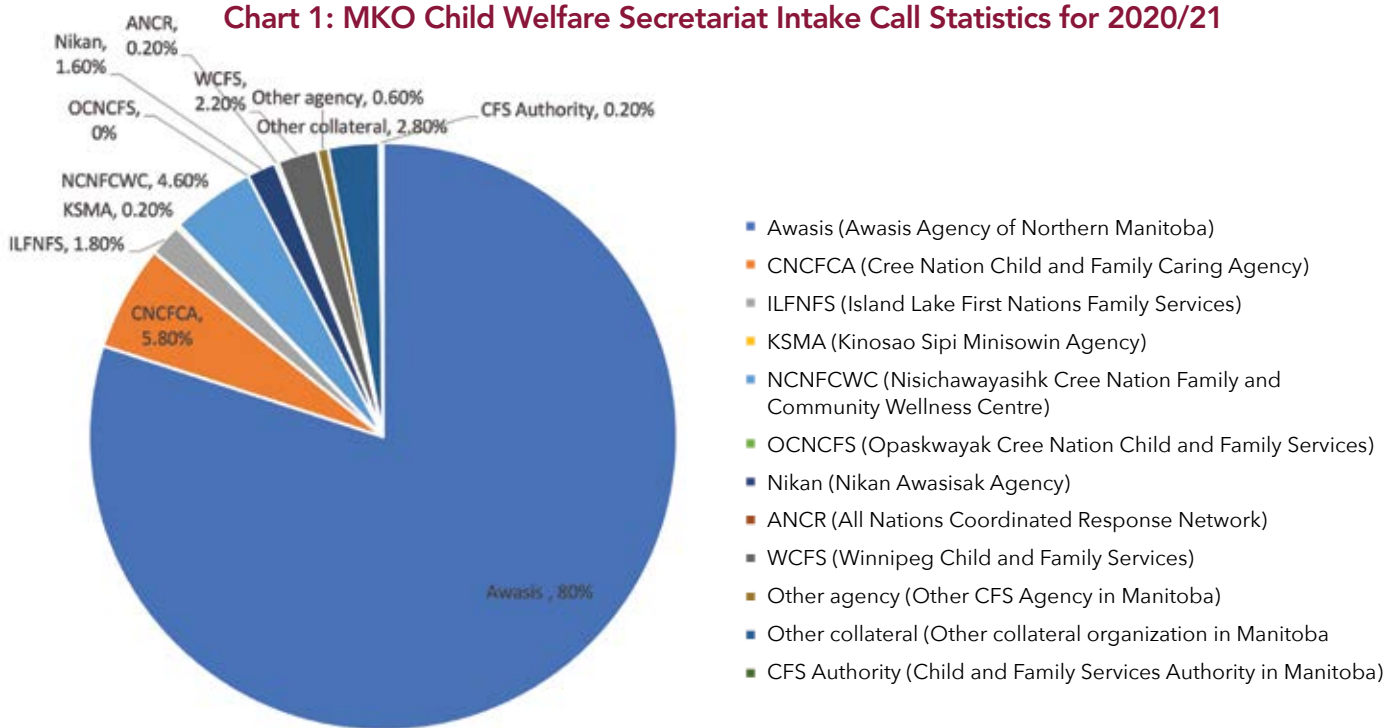
The CWS is available to support and assist the MKO First Nations in developing laws for child welfare at their request.

## ADVOCACY AND SUPPORT TO FIRST NATIONS CHILDREN, YOUTH AND FAMILIES . . . . .

A key function of the CWS is to provide advocacy, guidance, and support to First Nations children, youth

and families who are involved in the child welfare system in Manitoba, as well as other jurisdictions.

**Chart 1: MKO Child Welfare Secretariat Intake Call Statistics for 2020/21**



As reflected in Chart 1, in 2020/21, the MKO CWS received a total of 500 intakes, which included phone calls, emails, faxes and walk-ins at the Thompson Office. Most of these intakes were phone calls. The nature of these intakes focused mainly on parents who were involved in child welfare and seeking assistance in communicating with a child and family services agency. Most of the intakes (80%) were associated with Awasis Agency. In response, the CWS provided various

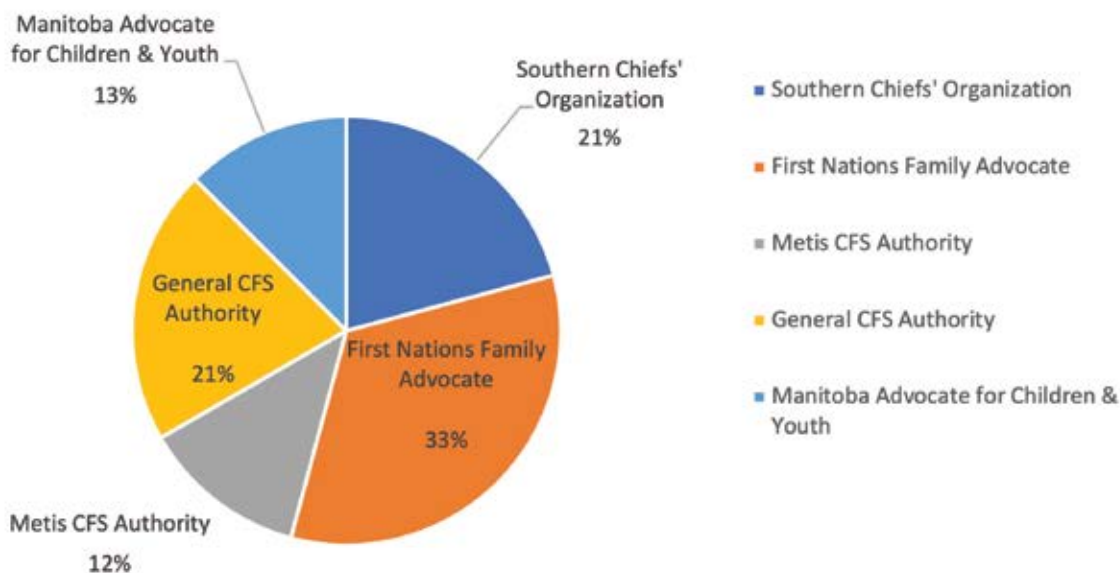
supports to children and families, including advocacy, translation of official documents, and personal supports to families.

As well, the CWS provided mediation services between parents and local CFS Agencies at the community level. Often parents become frustrated with the services they are receiving through a CFS Agency. In some cases, parents are unwilling to partake in discussions regarding case plan

programming with Health Services and the local CFS Agency. Sometimes this leads to a breakdown in communication and parents may become discouraged. In response, the CWS helps to bridge the gap for families needing programming support. Over the past year, the CWS received numerous

phone calls from parents for this type of assistance. As well, the CWS is finding many grandparents want to seek guardianship of their grandchildren and require CWS guidance in directing them to family lawyers to help them through this process.

**Chart 2: MKO Child Welfare Secretariat Response to Intakes in 2020/21**



As reflected in Chart 2, in 2020/21, the CWS responded to a total of 24 intakes from a CFS Authority or collateral organization. In these cases,

the CWS worked with the CFS Authority or collateral organization to address the needs and concerns of children and families.

**THE CWS TEAM.**

In 2020/21, new staff have been hired in the following areas: Executive Assistant; Senior Policy Analyst; Community Engagement Coordinator; and Community Language Specialist. The CWS includes the following staff.

- Shirley Allarie, CWS Director
- Phyllis Thorne, CWS Executive Assistant
- Colin Kinsella, CWS Senior Policy Analyst
- Rena Stevenson, CWS Researcher/Intake
- Janine Spence, CWS Research Assistant

- Amanda Ouskan, CWS Administrative Assistant
- Eva Goulet, CWS Community Engagement Coordinator
- Lisa Cook, CWS Community Jurisdiction Worker
- Isabelle Morris, CWS Community Language Specialist

During the past year, despite the impact of the COVID-19 pandemic and the challenges it has presented, it has been a very busy and productive year for the CWS. We look forward to continuing this work in the coming year.



# APPENDICES

# MKO Child Welfare Secretariat

Presentation to:  
MKO 40<sup>th</sup> Annual General Assembly  
August 17, 18, 19, 2021  
Norway House Cree Nation

Presented by:  
Shirley Allarie, Director  
Child Welfare Secretariat



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## History of Manitoba Keewatinowik Okimakanak Inc. (MKO)



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## History of MKO

- MKO was established in 1981 by the First Nations Chiefs in northern Manitoba.
- A political organization providing a voice for First Nations in northern Manitoba.
- In 1981, MKO represented about 65,000 citizens of 30 First Nations in northern Manitoba, an area that covers about half of Manitoba.
- MKO purpose:
  - to create opportunities by advocating, lobbying, and protecting within the jurisdiction of the MKO communities and citizens.
- Mission:  
"To maintain, strengthen, enhance, lobby for and defend the interests and rights of First Nation people within its' jurisdiction and to promote, develop and secure a standard quality of life deemed desirable and acceptable by its First Nations without limiting the generality of the foregoing and the objectives of MKO."



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## MKO Objectives

- Protecting inherent, Treaty, and Aboriginal rights
- Providing technical assistance, consultation, and advisory services to MKO member communities
- Protecting the powers and authority of MKO member First Nation governments
- Promoting and protecting the rights to establish First Nation-led institutions by MKO member First Nation governments
- Working with all Tribal Councils, Assembly of Manitoba Chiefs, Assembly of First Nations, and all non-affiliated First Nations
- Protecting and providing assistance to each citizen of the MKO First Nation community regardless of where they keep their residence



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## First Executive Council of MKO

### FIRST MKO EXECUTIVE COUNCIL INCORPORATED 1981



Back Row: Chief Esau Turner, Grand Rapids First Nation (deceased); Chief Charlie Constant, Opaskwayak Cree Nation (deceased);  
Chief Joe Guy Wood, St. Theresa Point First Nation  
Front Row: Chief Walter Manias, Cross Lake First Nation (deceased); Chief Maggie Halfour, Norway House Cree Nation

There was no Grand Chief in 1981. **Chief Joe Guy Wood** was selected as the chairperson of the Executive Council of Chiefs and MKO organization.



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## The Vision of Past Leaders

- Based on the vision of past leaders, MKO has become a strong and prominent organization.
- The leaders explored ways to strengthen and promote the interests of First Nation members to achieve autonomy and self-sufficiency in all policy areas that affect the lives of northern First Nation citizens.



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## The MKO Grand Chief

- Elected member voted from MKO Chiefs
- Principal spokesperson of the MKO First Nations
- The Grand Chief receives the mandate through:
  - The **Chiefs-in-Assembly**, consisting of leadership of member First Nations, who pass motions and resolutions
- The **Executive Council of Chiefs**, consisting of leaders appointed by their respective Tribal Councils in MKO territory and each member of the independent First Nations

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## MKO Organization

The past leaders carried the first of many policy areas that began MKO's mandate to provide opportunities in:

- Education and training
- Economic development
- Health and healing
- Housing and infrastructure
- Justice
- Natural resources
- Governance
- Treaty Land Entitlement
- Child and family services
- Other special projects

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# MKO CHILD WELFARE SECRETARIAT CHILD WELFARE HISTORY

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## **MKO Child Welfare History - 1980**

- The establishment of a First Nations Child and Family Secretariat in the MKO region was discussed by leadership.
- In the early 1980s, Local Child Care Committees recognized the need for change in child and family matters.
- Local Child Care Committees put these concerns to their leadership and began recommending to pursue the development of a First Nations child welfare law.

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## MKO Child Welfare History - 1983

- In 1983, MKO signed an agreement with Canada and Manitoba on Northern Indian Child Welfare
- Known as the “Tripartite Agreement” or Master Agreement
- Under the Tripartite Agreement, in 1983, Awasis Agency of Northern Manitoba was incorporated as a Child Caring Agency under *The Child and Family Services Act*

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## MKO Child Welfare History - 1983

- In April 1983 (the “Subsidiary Agreement”) was entered between Canada, Manitoba and Awasis Agency of Northern Manitoba
- Whereas the agency was mandated to provide services to children and families residing in a northern community

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## MKO Child Welfare History – 1992-1994

- In 1992, resolution passed by MKO Chiefs to establish the MKO Child Welfare Secretariat to assist and support MKO leadership, First Nations CFS Agencies, and communities in the area of child welfare
- To provide support and advocacy to children and families involved in the CFS system

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## MKO Child Welfare History – 1996-2000

- In December 1996, MKO Chiefs passed a resolution toward reclaiming authority and jurisdiction over child welfare
- MKO established the First Nations Child and Family Jurisdiction Project under the Framework Agreement Initiative
  - Community consultation process launched
- In 2000, MKO Child Welfare Secretariat office established

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## MKO Child Welfare History – 1996-2000

- In July 2000, under the Aboriginal Justice Inquiry-Child Welfare Initiative (AJI-CWI), MKO entered a Memorandum of Understanding (MOU) with the Province of Manitoba to restructure the CFS system in Manitoba
- Through the AJI-CWI, the mandates of First Nations CFS Agencies were extended and expanded to provide services to all members regardless of where they reside in Manitoba

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## MKO Child Welfare History – 2002-2005

- In November 2003, *The Child and Family Services Authorities Act* was proclaimed.
  - The Act created 4 new CFS Authorities, including the First Nations of Northern Manitoba CFS Authority
  - An important step in restructuring CFS system in Manitoba
- In 2005, First Nation status family's files transferred to First Nations CFS Agencies through the Authority Determination Protocol (ADP)

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## ***Doing it Our Way – It-To-Ta-Maso-Wak***

One of the policy areas that MKO championed and continues to lead is child welfare.

*It-To-Ta-Maso-Wak*, is moving forward, carrying the legacy of our past, present and future leaders.

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## **Federal Commitment to Reform Child Welfare**

- In March 2019, the Honourable Jane Philpott, former Minister of Indigenous Services, called for a special meeting with the three Manitoba Grand Chiefs regarding child welfare reform.
- Minister Philpott requested the Grand Chiefs' input as the Federal Government was committed to supporting First Nations on transferring jurisdiction over child welfare to First Nations.

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# MKO Child Welfare Secretariat

*An Act respecting First Nations, Inuit and  
Métis children, youth and families (the Act)*  
(Bill C-92)



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## The Act

- The federal Act, formerly known as Bill C-92, came into effect on January 1, 2020.
- The law is a comprehensive reform of child and family services and affirms the rights of Indigenous peoples to exercise their jurisdiction over child and family services.



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## The Act

- The purpose of the Act is to:
  - Affirm the inherent right of self-government, which includes jurisdiction in relation to child and family services
  - Contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)
  - Set out principles, as well as minimum national standards that must be adhered to in the delivery of child and family services for all Indigenous children in Canada regardless of their residence
  - Provide a framework for Indigenous peoples to establish their own laws for child welfare



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## The Act has two main purposes:

The Act

It recognizes the inherent jurisdiction of Indigenous peoples in child and family services and clears a path for the exercise of that jurisdiction

It sets out federal minimum standards on Indigenous child welfare



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## The Act– Implications for Service Provision

- Every child and family service provider who provides services to Indigenous children is required to follow the minimum standards in the Act.
- Until a First Nation community determines how it will exercise jurisdiction, existing agencies will continue to provide services to Indigenous children.

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## Exercising Jurisdiction under the Act

- The pathway to exercising jurisdiction is not a “one size fits all” approach.
- Once a First Nation has a law, it can transition towards exercising full or partial jurisdiction over child and family services at a pace they choose.

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## Exercising Jurisdiction under the Act

### Option #1

A First Nation or Indigenous governing body develops or adopts a child and family services law

The First Nation or Indigenous governing body sends notice to the Minister of Indigenous Services & Provinces advising them that they are exercising their jurisdiction

In this case, the Indigenous law will NOT prevail over conflicting federal, provincial/territorial laws on child and family services

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## Exercising Jurisdiction under the Act

Once the First Nation or Indigenous governing body has developed a law, they can send a request to the Minister and the Province to enter into a tripartite coordination agreement.



Coordination Agreement reached within 12 months **OR** Reasonable efforts to reach a Coordination Agreement were made during the period of 12 months.



Indigenous law comes into force and has the same force of federal law. First Nation or Indigenous governing body exercises their jurisdiction over child and family services.



### Option #2

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## The Federal Minimum Standards

- There are about 10 sections of the federal law containing substantive rules about child welfare (sections 9-17). These are called the “minimum standards”;
- The federal laws **layer** on top of the provincial laws and Indigenous laws. Both or all three can apply, unless there is a “conflict or inconsistency.”
- **All the federal minimum standards will prevail over provincial law.**
- **6 of the federal rules will prevail over Indigenous laws: Sections 10-15 [sections 22(1)]**



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## Conflicts or Inconsistencies

- Once a First Nation enacts their own child and family service law, the Indigenous law will trump the federal law (with the exceptions of the minimum standards in sections 10-15 (s22(1)), *The Canadian Human Rights Act* and the *Charter of Rights and Freedoms*).
- Once an Indigenous law is in effect, it will trump provincial/territorial law, where there is a conflict or inconsistency.



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## Section 8: Purpose & Principles of the Act:

The Purpose and Principles of the Act are set out in three subsections 8(a)-(c)

(a) affirm the inherent right of self-government which includes jurisdiction in relation to child and family services

(b) set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children; and

(c) contribute to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*



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## Section 9: Principles

The Act is to be interpreted and administered in accordance with the following principles at Sections 9 (1)-(3)

9(1) The Act is to be interpreted and administered in accordance with the principle of the best interest of the child.

9(2) The Act is to be interpreted and administered in accordance with the principle of cultural continuity.

9(3) The Act is to be interpreted and administered in accordance with the principle of substantive equality.



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## Section 10(3) - Best Interest Principles

To consider when determining best interests:

a) The child's cultural, linguistic, religious and spiritual upbringing and heritage;

b) The child's needs, given the child's age and stage of development, such as the child's need for stability;

c) The nature and strength of the child's relationship with his or her parents, caregiver and any member of the child's family who plays an important role in his or her life;



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## Best Interests Principles cont'd

d) The importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community to which the child belongs.

e) The child's views and preferences, giving weight to the child's age and maturity;

f) Any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community to which the child belongs.



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## Best Interests Principles cont'd

g) Any family violence and its impact on the child, including whether the child is directly exposed to the family violence as well as the physical, emotional, and psychological harm or risk of harm to the child.

h) Any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child.

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## Section 11 – Effect of Service

- **S. 11 – “Effect of Services”**
- This section requires that child and family services provided in relation to an Indigenous child are to take be provided in a manner that takes into account:
  - The child’s needs (physical, emotional, psychological safety, security and well-being)
  - The child’s culture,
  - Allows the child to know his/her family origins,
  - Promotes substantive equality between the child and other children.

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## Section 12 - Notice

- **S. 12 – Notice** – In the context of providing child and family services in relation to an Indigenous Child, before taking any “significant measure” in relation to the child, the service provider must provide **notice** of the measure to the child’s parent and the care provider as well as to the Indigenous governing body (First Nation).
- S. 12(2) – Personal Information about a child, family members or care provider is not to be included in the notice.



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## Section 12 - Notice

- Under section 12 of the Act, Shamattawa First Nation has authorized the MKO Child Welfare Secretariat as the Indigenous governing body.
- All notices of significant measure regarding Shamattawa First Nation children are to be sent to the MKO Child Welfare Secretariat.



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## Section 13 – Representations and Party Status

- **S. 13 – Representations and Party Status** - In the context of civil proceedings (court), the child's parent(s) and care provider have the right to make *representations* and to have *party status*.
- The Indigenous governing body has the right to make *representations*.

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## Section 14 – Priority to Preventive Care

- Section 14(1) of the Act sets out that priority should be given to preventative care to support the child and the child's family where it is consistent with best interests of the child.
- Section 14(2) also states that priority should be given to prenatal care that promotes preventative care to prevent apprehensions at birth.

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## Section 15 – Socio-Economic Conditions

- Section 15 of the Act sets out that a child must not be apprehended solely based on the socio-economic conditions to the extent that it is consistent with the best interests of the child – including poverty, lack of adequate housing, or parent’s state of health.
- Before taking a child from his or her parent(s) or any other adult member of his/her family, the service provider should demonstrate that **reasonable efforts** were made to have him or her continue to reside with that parent or family member.



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## Section 16 – Placement Priorities

- Where a child is apprehended, there is a priority order of placement that should be followed (where consistent with the best interests of the child):
  1. Parents;
  2. Family;
  3. Same Indigenous community/group/people;
  4. Others.
- Placement with or near siblings must be considered.
- Reassessment on an ongoing basis to see if child can be returned to parents or extended family.



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## Section 17 – Attachment and Emotional Ties

- Section 17 sets out that in the context of providing child and family services to an Indigenous child, if the child is not placed with a family member, the child's **attachment and emotional ties** to family members are to be promoted where consistent with best interests.

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## Notice to Indigenous Services Canada

- Across Canada, as of March 31, 2021, 38 Indigenous governing bodies have given their notice of intention to exercise legislative authority or requested to enter into a coordination agreement.



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## Notice to Indigenous Services Canada

- In Manitoba:
  - Three Indigenous governing bodies have given their notice of intention to exercise legislative authority over child welfare.
    - Sioux Valley Dakota Nation
    - Fisher River Cree First Nation
    - Pimicikamak Okimawin
  - Five Indigenous governing bodies have requested to enter into a coordination agreement.
    - Manitoba Metis Federation
    - Island Lake Tribal Council
    - First Nations in Treaty 2 Territory
    - Opaskwayak Cree Nation
    - Peguis First Nation



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## MKO: Advocacy & Support to First Nations

- Over a series of meetings, MKO, alongside the Assembly of Manitoba Chiefs and the Southern Chiefs' Organization, met with Indigenous Services Canada (ISC) and successfully negotiated funding for Manitoba First Nation communities.
- MKO negotiated the funding go directly to First Nations to assist them in exercising their jurisdiction over child and family services.



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## MKO: Advocacy and Support to First Nations

- MKO Child Welfare Secretariat was mandated by the MKO Chiefs-in-Assembly to provide advocacy and support to the northern First Nations communities in the development of their laws.
- MKO advocates and supports First Nations as the designated “Indigenous governing body” to receive funding to develop their own laws.

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## MKO: Advocacy and Support to First Nations

- MKO, through resolutions passed by the MKO Chiefs-in-Assembly, had previously developed a First Nations Family Law template.
- The draft law was developed in consultation with the MKO communities.
- MKO is currently updating the draft First Nations Family Law and translating it into Indigenous languages.
- All MKO communities are welcome to utilize the MKO Family Law template when developing their laws.

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## MKO Family Law

### Preface:

First Nations possess the right to be self-governing and to create laws based on the needs and aspirations of its communities and citizens. The treaties signed between First Nations and the Europeans bears witness to the sovereignty of First Nations to sustain their governments and to exercise jurisdiction over matters that affect First Nation citizens.



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## MKO Family Law

- **Purpose:**
  - Affirm and assert First Nations jurisdiction, power and authority over child and family matters.
  - Legally empower MKO First Nations with the capacity to develop and implement First Nations child and family services which are consistent with the languages, traditions, values and beliefs held by First Nations citizens.
  - Promote and improve the unity and wellness of First Nations families and communities and to ensure the best care for First Nations children.
  - Provide educational needs of the family and community consistent with First Nations culture and languages.



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## **MKO Family Law**

- MKO First Nations communities can use the MKO Family Law template to create their own Family Law.



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