MKO Family Law Template

Empowering Our Children's Footprints

DECEMBER 2022

Manitoba Keewatinowi Okimakanak Inc.
Child Welfare Secretariat (CWS)

MKO Family Law Template

- In 1998, the MKO Chiefs-in-Assembly 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 by the MKO communities and endorsed by the MKO Chiefs-in-Assembly.
- Between 2000 and 2019, 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 MKO Chiefs-in-Assembly directed the CWS 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 Métis children, youth and families, 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 continued 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.
- On May 27, 2021, the MKO Executive Council adopted the motion for the CWS to move forward with the MKO Family Law template, remove the "Draft," and circulate it to the MKO communities.

The MKO Family Law template should be considered as a starting point for a member First Nation considering drafting and adopting their own law, with the template law helping to inform conversations within a community around:

- the member First Nation's existing capacity to exercise legislative jurisdiction;
- the funding and other resources a member First Nation may need to effectively exercise legislative jurisdiction;
- the approach the member First Nation will take towards negotiating coordination agreements; and
- the overall approach to be taken to exercising legislative jurisdiction in a manner that is sensitive to custom and the needs to the community.

When reviewing and considering changes to the template law for the purpose of drafting a law for a particular community, drafters should be aware of certain decisions that informed the contents of this template law and its structure:

1. Sections 9 to 19 of the Act will apply to a member First Nation that exercises legislative jurisdiction over child and family services regardless of whether the language from these provisions is incorporated into a community's law. Further, section 22(1) of the Act provides that sections 10 to 15 of the Act will prevail to the extent of any conflict or inconsistency between the Act and a community's law. As such, a member First Nation can consider supplementing the contents of sections 10 to 15 (e.g. by adding onto the factors to be considered under the principle of the best interests of the child), but cannot put in place provisions that directly conflict with sections 10 to 15.
2. The Canadian Human Rights Act and Canadian Charter of Rights and Freedoms will apply to a community exercising jurisdiction over child and family welfare. In this vein, ways to protect the procedural rights of people who may be affected by the law and decisions made under it have been incorporated throughout.
3. The Act defines "child and family services" very broadly. As such, the template law provides a similarly broad definition in order to allow for a community to occupy as much of the child and family welfare space as possible. A member First Nation, however, will want to consider its capacity to exercise jurisdiction in this area and may want to narrow its law to specific components of child and family welfare if necessary. Further, some ways that a community will want to exercise jurisdiction under a broad definition of child and family services will require careful consideration when a coordination agreement is being negotiated.

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PART A – PRELIMINARY MATTERS

1. Citation

1.1 This Law may be cited as [INSERT NAME OF LAW].

2. Definitions

2.1 For the purposes of this Law:

(a) "abuse" means an act or omission by any person where the act or omission results in:

(i) physical injury to a child,

(ii) emotional disability of a permanent nature in the child or is likely to result in such a disability, or

(iii) sexual exploitation of the child with or without the child's consent;

(b) "Act" means *An Act respecting First Nations, Inuit and Métis children, youth and families,* SC 2019, c 24, as amended or replaced from time to time;

(c) "Agency" means the [INSERT NAME OF AGENCY], as established and empowered pursuant to Part C of this Law;

(d) "Board" means the board of directors of the Agency;

(e) "child" means a person under the age of majority:

(i) who is a citizen or entitled to become a citizen, and

(ii) to which this Law applies pursuant to a coordination agreement;

(f) "child and family services" means programs and services to support child and family welfare, including primary, secondary, and tertiary prevention services, prenatal services, protection services, and services related to customary caregiving and customary adoption;

(g) "child care facility" means a group home, treatment centre, or [INSERT ANY OTHER CHILD CARE FACILITIES THAT MAY BE USED BY THE COMMUNITY UNDER THIS LAW];

(h) "child pornography" means

(i) a photographic, film, video, or other visual representation, whether or not it was made by electronic or mechanical means,

(1) that shows a child engaged in, or depicted as engaged in, explicit sexual activity, or

(2) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ of a child or the anal region of a child,

(ii) any written material, visual representation, or audio recording that advocates or counsels sexual activity with a child that would be an offence under the *Criminal Code*,

(iii) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code*, or

(iv) any audio recording that has as its dominant characteristic the description, presentation, or representation, for a sexual purpose, of sexual activity with a child that would be an offence under the *Criminal Code*;

(i) "Child Pornography Reporting Regulation" means the Child Pornography Reporting Regulation, Man Reg 79/2009, as amended or replaced from time to time;

(j) "citizen" means any person whose name appears or is entitled to appear on the Nation's Band List;

(k) "Council" means the Chief and Council of the First Nation;

(l) "*Criminal Code*" means the *Criminal Code* RSB 1985, c C-46, as amended or replaced from time to time;

(m) "critical incident" means an incident that has resulted in the death or serious injury of a child:

(i) who was in the care of, or received services from, the Agency, or

(ii) whose family received services from the Agency;

(n) "Critical Incident Reporting Regulation" means the Critical Incident Reporting Regulation, Man Reg 154/2015, as amended or replaced from time to time;

(o) "customary care" means the voluntary or involuntary placement of a child in the care of another person in accordance with the culture, traditions, and customs of the Nation;

(p) "customary caregiver" means a person who provides customary care to a child;

(q) "Director" means the Director of [INSERT NAME OF AGENCY], as appointed pursuant to Part C of this Law;

(r) "family" means…

(s) "Family Council" means the Family Council established and empowered pursuant to Part C of this Law;

(t) "group home" means a home where ordinarily not fewer than five or more than eight children are placed by a child and family services provider for full-time care and supervision;

(u) "guardian" means a person other than a parent of a child or a customary caregiver who has been appointed guardian of the person of the child by a court of competent jurisdiction or to whom guardianship has been surrendered pursuant to a law of a province;

(v) "knowledge keeper" means a person who is acknowledged by the community of the Nation to possess knowledge of the values, customs, and beliefs of the Nation;

(w) "Law" means this [INSERT NAME OF LAW], as amended or replaced from time to time, and includes all attached schedules;

(x) "MKO" means Manitoba Keewatinowi Okimakanak Inc. and includes any successor entity;

(y) "MKO CWS" means the MKO Child Welfare Secretariat and includes any successor entity;

(z) "Nation" means [INSERT NAME OF FIRST NATION] and includes any successor entity;

(aa) "parent" means a biological or adoptive, whether by custom or otherwise, parent of a child;

(bb) "place of safety" means any place used for emergency temporary care and protection of a child as may be required under this Law and includes treatment centres;

(cc) "prenatal services" means service provided to an expectant mother;

(dd) "record" means a record of information in any form, and includes information that is written, photographed, recorded, or stored in any manner, on any storage medium or by any means, including by graphic, electronic, or mechanical means, but does not include electronic software or any mechanism that produces records;

(ee) "Special Hearing Board" means an appeal body established by MKO for the purpose of hearing appeals from decisions of the Family Council in accordance with Part G of this Law;

(ff) "treatment centre" means any place established for the care and treatment of more than eight children;

(gg) "vulnerable person" means an adult living with a mental disability who is in need of assistance to meet their basic needs with regard to personal care or management of their property; and

(hh) "youth" means a person older than [INSERT AGE] and younger than the age of majority.

2.2 Unless otherwise provided in this Law, the meaning given to terms used in the Act shall apply to this Law.

3. Interpretation

3.1 In this Law:

(a) headings and subheadings are for convenience only, do not form part of this Law, and in no way define, limit, alter, or enlarge the scope or meaning of any provision of this Law;

(b) unless the context requires otherwise, the use of the singular is to be construed as including the plural and vice versa;

(c) unless the context requires otherwise, a reference to one gender includes reference to all other genders;

(d) "shall" and "must" are to be construed as imperative;

(e) the words "include," "includes," and "including" are to be read as if they are followed by the phrase "without limitation"; and

(f) a reference to an enactment includes every amendment to it, every regulation or bylaw made under it, and any enactment enacted in replacement of it.

3.2 If, in this Law, the time for doing something expires or falls on a day where the main office of the Nation is usually closed, including weekends and holidays, that thing may be done on the very next business day that the main office of the Nation is open.

3.3 If there is an inconsistency or conflict between this Law and any other enactment of the Nation, this Law shall prevail to the extent of the inconsistency or conflict.

3.4 If there is an inconsistency or conflict between this Law and a coordination agreement, the coordination agreement shall prevail to the extent of the inconsistency or conflict.

3.5 If there is an inconsistency or conflict between this Law and any other agreement to which the Nation was party prior to the enactment of this Law, the other agreement shall prevail to the extent of the inconsistency or conflict.

4. Rights, Jurisdiction, and Application

Non-Abrogation

4.1 Nothing in this Law is intended to abrogate or derogate from any Aboriginal, treaty, or other right or freedom that pertains now or in the future to the Nation or its citizens.

4.2 Nothing in this Law is intended to affect the eligibility of the Nation or any citizen to receive services or participate in such public or Aboriginal programs as may be established from time to time to the extent that the Nation has not assumed responsibility for such services or programs.

Fiduciary Relationship

4.3 Nothing in the Law is intended to abrogate or derogate from the fiduciary relationships between the Crown and the Nation or its citizens.

Jurisdiction

4.4 The Nation's inherent rights of self-determination and self-government, as granted by the Creator as well as recognized and affirmed in the United Nations Declaration on the Rights of Indigenous Peoples and section 35 of the *The Constitution Act, 1982,* includes jurisdiction in relation to the welfare of children and families, including:

(a) the power to legislate, enforce laws, and resolve disputes in relation to the provision of child and family services; and

(b) the placement of children who have been apprehended by any child and family services provider.

Application

4.5 This Law applies to all citizens regardless of their location or residence, including regardless of whether they are located or residing on or off reserve.

4.6 Without limiting section 4.5, the Nation has exclusive authority over its citizens with respect to child and family welfare matters, including respecting the placement of children regardless of their location or residence.

4.7 The child and family services provided by the Agency pursuant to this Law may be accessed by members of another First Nation, but only to the extent agreed upon between the Agency and the other First Nation.

4.8 The child and family services provided pursuant to this Law may be accessed by persons who are neither citizens nor members of another First Nation, but only to the extent provided for in a coordination agreement.

Notes: _____

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PART B – PURPOSES AND PRINCIPLES

5. Purposes

5.1 The purposes of this Law are to:

(a) affirm the rights and exclusive jurisdiction of the Nation over child and family welfare in relation to its citizens;

(b) establish an agency to provide child and family services on behalf of the Nation; and

(c) set out the principles applicable to the interpretation and administration of this Law and to the provision of child and family services.

6. Principles

6.1 The following fundamental principles shall inform the interpretation and administration of this Law:

(a) We, the Nation, acknowledge and affirm the Creator grants us the power and authority to govern ourselves and to make laws.

(b) We believe that families are the foundation of our communities and that children are a gift from the Creator. As such, the health and social well-being of the family is pivotal to the success of this Law.

(c) We believe First Nations governments have the responsibility to protect and preserve the rights of parents and children.

(d) We believe that our languages, values, and customs must be preserved by our governments and our laws.

(e) We believe that our inherent right to govern our own affairs cannot be abrogated by an enactment of any other jurisdiction.

(f) We believe the family has the responsibility of raising children and maintaining family unity, and the community has a duty to promote and support family healing.

(g) First Nations governments and their citizens, by virtue of their inherent rights, should assist in the amelioration of family relations by instituting and promoting First Nations language, culture, and traditions.

(h) We believe that preservation of the family unit between biological parents and their children should be prioritized and that a transfer of guardianship of a child should only occur in exceptional circumstances.

(i) We will apply all customary family values in the administration and enforcement of this Law consistent with the teachings of love, honesty, caring, respect, and sharing.

(j) Traditional and customary approaches based on First Nations values and beliefs should be used to resolve family and community issues in order to achieve balance, harmony, and healing of the community.

(k) The physical, mental, emotional, and spiritual well-being of our families, children, and the community will be the foundation of this Law.

(l) First Nations children have a right to family, culture, language, and a right to remain in their community of origin.

(m) We believe the responsibility of raising a family is eternal and that the responsibilities to our children continue into adulthood. If determined by Council and if the need arises, the child and family services provided pursuant to this Law should be available to all citizens regardless of their age.

6.2 Without limiting the foregoing, this Law is to be interpreted and administrered in accordance with:

(a) the principle of the best interests of the child;

(b) the principle of cultural continuity as reflected in the following concepts:

(i) cultural continuity is essential to the well-being of children, families, and the Nation;

(ii) the transmission of the languages, cultures, practices, customs, traditions, ceremonies, and knowledge of the Nation is integral to cultural continuity;

(iii) a child's best interests are often promoted when the child resides with members of their family and the culture of the Nation to which they belong is respected;

(iv) child and family services provided in relation to a citizen are to be provided in a manner that does not contribute to the assimilation of the Nation to which the child belongs or to the destruction of the culture of that Nation; and

(v) the characteristics and challenges of the region in which a child, a family, or the Nation is located are to be considered; and

(c) the principle of substantive equality as reflected in the following concepts:

(i) the rights and distinct needs of a child with a disability are to be considered in order to promote the child's participation, to the same extent as other children, in the activities of their family or the Nation;

(ii) a child must be able to exercise their rights under this Law, including the right to have their views and preferences considered in decisions that affect them, and they must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

(iii) a child's family member must be able to exercise their rights under this Law, including the right to have their views and preferences considered in decisions that affect them, and they must be able to do so without discrimination, including discrimination based on sex or gender identity or expression; and

(iv) in order to promote substantive equality between Indigenous children and other children, a jurisdictional dispute must not result in a gap in the child and family services that are provided in relation to Indigenous children.

6.3 The following principles shall inform the provision of child and family services under this Law:

(a) trauma-informed;

(b) family-centred;

(c) relationship-centred;

(d) cultural safety;

(e) harm reduction;

(f) self-determination;

(g) Jordan's Principle;

(h) decolonization; and

(i) wholism.

6.4 Unless otherwise provided, this Law is to be interpreted and administered, including any discretionary authority granted by this Law, in accordance with the culture, traditions, and customs of the Nation.

7. Best Interests of the Child

7.1 The best interests of the child must be a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to a child and, in the case of decisions or actions related to apprehension, the best interests of the child must be the paramount consideration.

7.2 When the factors referred to in section 7.1 are being considered, primary consideration must be given to the child's physical, emotional, and psychological safety, security, and well-being, as well as to the importance, for that child, of having an ongoing relationship with their family and with the Indigenous group, community, or people to which they belong and of preserving the child's connections to their culture.

7.3 To determine the best interests of a child, all factors related to the circumstances of the child must be considered, including:

(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 their parent, the care provider, and any member of their family who plays an important role in their life;

(d) the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Nation;

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(f) any plans for the child's care, including care in accordance with the customs or traditions of the Nation;

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

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

Notes: _____

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PART C – GOVERNANCE AND ADMINISTRATION OF LAW

8. [INSERT NAME OF AGENCY]

Establishment of [INSERT NAME OF AGENCY]

8.1 The Agency shall be established and maintained by the Nation.

8.2 The Agency shall be a not-for-profit body corporate incorporated under the laws of [CANADA OR MANITOBA].

8.3 The composition of the Board shall be the same as Council.

8.4 Remuneration for members of the Board shall be determined by Council.

8.5 The Agency shall maintain its head office in [INSERT LOCATION WHERE HEAD OFFICE IS TO BE MAINTAINED].

Duties of [INSERT NAME OF AGENCY]

8.6 The duties of the Agency are as follows:

(a) develop and provide child and family services for citizens, regardless of their location or residence, for the protection of children and promotion of family unity;

(b) providing child and family services to anyone eligible to receive such services under a coordination agreement or an agreement between the Nation and another First Nation;

(c) work with citizens, families, community groups, other service providers, the Nation, MKO CWS, and other relevant stakeholders to provide healing and support to families and caregivers;

(d) investigate allegations or evidence that children may be in need of intervention;

(e) provide parenting education and other supportive services and assistance to children who are parents, with a view to ensuring a stable and workable plan for maintaining family unity;

(f) develop and maintain child care resources;

(g) protect children;

(h) provide care for children in its care;

(i) develop permanency plans for all children in its care with a view to establishing a healthy family life for these children;

(j) facilitate customary caregiving arrangements, including making recommendations to the Family Council regarding related decisions to be taken by the Family Council and preparing all required forms and documents;

(k) provide services to support customary caregivers and children being given care through a customary caregiving arrangement;

(l) facilitate customary adoption arrangements, including making recommendations to the Family Council regarding related decisions to be taken by the Family Council and preparing all required forms and documents;

(m) provide services to support adopted children and their adoptive families;

(n) provide for all necessary administrative and logistical support and resources that the Family Council may need to fulfill its duties and exercise its powers;

(o) provide such reports as the Board or Council may require;

(p) take reasonable measures to make known in the community the services the Agency provides;

(q) act as the representative of the Nation in all civil proceedings and proceedings before the Special Hearing Board respecting the provision of child and family services in relation to a citizen;

(r) maintain such records as are required for the administration or enforcement of this Act; and

(s) provide any other services or perform any other duties given to it by this Law, by the Board, or by Council.

Powers of [INSERT NAME OF AGENCY]

8.7 The Agency has all powers necessary to fulfill its duties under this Law, including:

(a) the power to set and charge fair rates for the child and family services it provides;

(b) the power to enter into agreements with any child and family services provider of any other jurisdiction;

(c) the power to enter into agreements to facilitate the provision of child and family services by the Agency, including custody and access agreements;

(d) the power to place a child who is in need of protection in a place of safety; and

(e) the power to bring the child under the care and control of the Agency.

8.8 Any agreement entered into pursuant to section 8.7(c) with a person under the age of majority is as valid as if that person had attained the age of majority.

8.9 Notwithstanding section 8.7, the Agency must:

(a) not borrow except in accordance with a resolution of Council; and

(b) guarantee or otherwise provide security for any indebtedness except in accordance with a resolution of Council.

8.10 Without limiting section 8.7, the Agency may make bylaws in furtherance of its duties, including bylaws:

(a) respecting the child and family services provided by the Agency pursuant to this Law, including the establishment of standards for those services;

(b) prescribing forms for the purposes of this Law;

(c) providing for or respecting the classification, establishment, designation, regulation, registration, and licensing of child care facilities on reserve, including:

(i) respecting the conditions to be met and maintained to obtain, retain, or renew a licence, and

(ii) respecting the suspension and cancellation of licences for child care facilities;

(d) prescribing fees for services and programs under this Law;

(e) prescribing standards for the operation of treatment centres on reserve;

(f) prescribing the action to be taken by the Agency upon notification of a child being in need of intervention;

(g) respecting qualifications to be met by persons who provide services on behalf of or for the Agency;

(h) establishing guidelines for determining financial assistance to be provided by the Agency to a citizen;

(i) establishing guidelines for determining the amount of child support to be paid for a child by a parent or guardian of the child under an agreement under this Law;

(j) prescribing information, including financial information, to be provided by a parent, guardian, or customary caregiver for decisions made respecting a child under this Law;

(k) prescribing placement procedures with respect to children;

(l) respecting procedures applicable to reporting information under section 16 and to actions by the Agency upon receipt of such information;

(m) respecting access to information contained in the files of the Agency; and

(n) respecting the retention, storage, and destruction of records in the custody or control of the Agency.

Financial and Reporting Requirements of the [INSERT NAME OF AGENCY]

8.11 The Agency must:

(a) submit a yearly budget to Council, at the time and in the manner that Council requires;

(b) keep financial and other records in accordance with directions given by Council;

(c) submit reports, returns, statistical information and financial statements, including audited financial statements, at the time and in the manner that Council requires; and

(d) prepare and submit an annual report that includes audited financial statements to Council.

9. Employees of [INSERT NAME OF AGENCY]

9.1 The Board shall hire a qualified person to act as Director to oversee the management, operations, and affairs of the Agency in accordance with this Law.

9.2 The Director shall be primarily responsible for the fulfillment of the Agency's duties.

9.3 The Agency shall hire employees for the purpose of carrying on the business of the Agency, and may determine their conditions of service.

10. Family Council

Establishment of Family Council

10.1 An advisory and dispute resolution body known as the Family Council shall be established by Council.

10.2 The Family Council shall be composed of seven citizens and must include:

(a) at least one person who is or has been a mother;

(b) at least one person who is or has been a father;

(c) at least one person who is a youth; and

(d) at least one person who is a knowledge keeper.

10.3 The term of office of members of the Family Council shall be from their date of appointment by Council until the earlier of:

(a) the end date of their appointment, as determined upon their appointment or renewed appointed by Council;

(b) where the member has been appointed as a youth member and there are no other youth on the Family Council, the date the member reaches the age of majority;

(c) the resignation of the member, such resignation to be effective, unless otherwise approved by Council, a minimum of 30 days after being given;

(d) the death of the member; or

(e) the date when, in the opinion of Council, the member becomes incapable of fulfilling their duties, including due to incapacity or unwillingness to fulfill the duties of the Family Council.

10.4 Council shall appoint members to the Family Council within 30 days of this Law coming into effect and shall replace members within 30 days of their terms of office coming to an end.

10.5 Funding for the Family Council, including remuneration for members of the Family Council, shall be determined by Council.

Duties of Family Council

10.6 The duties of the Family Council are as follows:

(a) establish procedures for its decision-making, including taking into account the procedural rights of all those who may come before it and including measures to protect the confidentiality of records and the identities of children and vulnerable persons, where necessary;

(b) make all decisions required of it under this Law, including those related to temporary care of a child, customary care of a child, and customary adoption of a child;

(c) provide oral or written reasons of its decisions; and

(d) any other matters that are ancillary to any of the above duties.

Powers of Family Council

10.7 The Family Council has all powers necessary to fulfill its duties under this Law, including:

(a) the power to request that any person appear before it as a witness, in order to provide testimony or documentation relating to the matter being considered;

(b) the power to request that any person appear before the Family Council in order to answer any question or provide information in relation to any matter before it;

(c) the power to retain experts or persons having special technical or legal knowledge to advise it when it performs its duties under this Law;

(d) the power to determine the appropriate child and family services to be offered in a particular situation, including the placement of a child in accordance with this Law;

(e) the power to determine who may have access to a child who has been apprehended by the Agency; and

(f) the power to establish processes for facilitating reviews of decisions of the Agency pursuant to Part G of this Law.

Miscellaneous

10.8 No member of the Family Council shall participate in any proceeding or any decision where that member would be in a conflict of interest.

10.9 Any person directly affected by a proceeding of the Family Council is entitled to:

(a) receive advanced notice of the proceeding;

(b) attend the proceeding; and

(c) make representations at the proceeding.

10.10 Any person directly affected by a proceeding of the Family Council or who is requested to appear before the Family Council is entitled to be represented by legal counsel at the proceeding.

10.11 No member of the Family Council shall be held personally liable for anything said or done, or omitted to be said or done, for performing any duty or exercising any power under this Law in good faith.

11. [INSERT NAME OF OTHER ENTITY (E.G. WOMEN'S COUNCIL, YOUTH COUNCIL)

Duties of [INSERT NAME OF OTHER ENTITY]

12.1

Powers of [INSERT NAME OF OTHER ENTITY]

12.2

12. Coordination and Collaboration with MKO CWS

12.1

13. Resolutions of Council

13.1 Council may make resolutions to assist with the administration and implementation of this Law, including resolutions in relation to any matter that the Agency has the power to make a bylaw in relation to pursuant to section 8.10.

13.2 If there is an inconsistency or conflict between a resolution passed pursuant to this section and a bylaw of the Agency, the resolution of Council shall prevail to the extent of the inconsistency or conflict.

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PART D – CHILD AND FAMILY WELFARE

14. Services to Promote Family Unity and Protect Children

14.1 A citizen may apply to the Agency, on their own behalf or on behalf of another citizen, for child and family services—including counselling, guidance, supportive, educational, and emergency shelter services, and including related financial and material assistance—to help address a situation that is or may be threatening the unity of a family or that is or may be requiring a child to be in need of intervention.

14.2 For clarity, the Agency may provide child and family services without an application under section 14.1.

15. Child Care Facilities

15.1 No person may operate a child care facility except with a valid licence issued in accordance with a bylaw of the Agency or a resolution of Council.

16. Child in Need of Intervention

16.1 For the purposes of this Law, a child is in need of intervention where the life, health, emotional well-being, or development of the child is endangered by the act or omission of a person.

16.2 Without restricting the generality of section 15.1, a child is in need of intervention where:

(a) the child is without adequate care, supervision, or control;

(b) the child is in the care, custody, control, or charge of a person:

(i) who has died and there is no living parent, guardian, or customary caregiver of the child,

(ii) who is unable or unwilling to provide adequate care, supervision, or control of the child,

(iii) whose conduct endangers or might endanger the life, health, emotional well-being, or development of the child, or

(iv) who neglects or refuses to provide or obtain proper medical or other remedial care or treatment necessary for the health or well-being of the child or who refuses to permit such care or treatment to be provided to the child when the care or treatment is recommended by a duly-qualified medical practitioner;

(c) is abused or is in danger of being abused, including where the child is likely to suffer harm or injury due to child pornography;

(d) is beyond the control of a person who has the care, custody, control, or charge of the child;

(e) is likely to suffer harm or injury due to the behaviour, condition, domestic environment, or associations of the child or of a person having care, custody, control, or charge of the child;

(f) is subjected to aggression or sexual harassment that endangers the life, health, or emotional well-being of the child; or

(g) being under the age of 12 years, is left unattended and without reasonable provision being made for the supervision and safety of the child.

17. Reporting a Child in Need of Intervention

17.1 Subject to section 17.2, where a person has information that leads the person reasonably to believe that a child is or might be in need of intervention as provided in article 16, the person shall as soon as possible report the information to the Agency or to a parent, guardian, or customary caregiver of the child.

17.2 Where a person under section 17.1:

(a) does not know the identity of the parent, guardian, or customary caregiver of the child;

(b) has information that leads the person reasonably to believe that the parent, guardian, or customary caregiver:

(i) is responsible for causing the child to be in need of intervention, or

(ii) is unable or unwilling to provide adequate protection to the child in the circumstances; or

(c) has information that leads the person reasonably to believe that the child is or might be suffering abuse by a parent, guardian, or customary caregiver of the child or by a person have care, custody, control, or charge of the child

subsection 17.1 does not apply and the person shall as soon as is practicable report the information to the Agency.

17.3 Notwithstanding any federal or provincial enactment, this article 17 applies even where the person has acquired the information through the discharge of professional duties or within a confidential relationship, but nothing in this section 17.3 abrogates any privilege that may exist because of the relationship between a solicitor and the solicitor's client.

17.4 In addition to the duty to report under subsection 17.1 and 17.2, a person who reasonably believes that a representation, material, or recording is, or might be, child pornography shall promptly report the information to the Agency.

17.5 Nothing in subsection 17.4 requires or authorizes a person to seek out child pornography.

17.6 No action lies against a person for providing information in good faith and in compliance with this article 17.

17.7 Except as required in the course of proceedings of the Family Council, or with the written consent of the informant, no person shall disclose:

(a) the identity of an informant under this article 17:

(i) to the family of the child reported to be in need of protection, or

(ii) to the person who is believed to have caused the child to be in need of protection; or

(b) the identity of an informant under section 17.4 to the person who possesses or accessed the representation, material, or recording that is or might be child pornography.

17.8 No person may suspend, demote, discipline, harass, interfere with, or otherwise disadvantage any informant under this article 17.

17.9 Where the Agency has reasonable grounds to believe that a person has caused a child to be in need of intervention or failed to report information in accordance with section 16.7, the Agency may report the matter to the body or person that governs the professional status of the person or certifies, licenses, or otherwise authorizes or permits the person to carry on their work or occupation.

18. Agency to Investigate

18.1 Where the Agency receives information that causes the Agency to suspect that a child is in need of intervention, the Agency shall immediately investigate the matter.

18.2 Where the Agency concludes, after an investigation under subsection 18.1, that a child is in need of intervention, the Agency shall report its conclusion to the Family Council, which shall order such further steps as are required by this Law or as the Family Council considers necessary for the protection of the child and the promotion of family unity.

18.3 Without limiting section 18.2, where the Agency concludes, after an investigation under subsection 18.1, that a child is in need of intervention, the Agency shall report its conclusion:

(a) to the parents, guardian, or customary caregiver of the child;

(b) where there is no parent, guardian, or customary caregiver of the child, to a person having full-time custody or charge of the child;

(c) to the person, if any, who is identified by the investigation as the person who caused the child to be in need of intervention;

(d) in the case of a person under (c) whose employment:

(i) involves the care, custody, control, or charge of children, or

(ii) permits unsupervised access to children

to the employer or the manager or supervisor at the place of employment;

(e) where the child attends school, to the principal of the school or the superintendent of the school division in which the school is located;

(f) to the child where, in the opinion of the Agency, the child is capable of understanding the information, except where disclosure is not in the best interests of the child; and

(g) to the person who reported the information that gave rise to the investigation, except where disclosure is not in the best interests of the child.

18.4 Where the Agency has concluded, after an investigation under section 18.1, that a child is not in need of intervention, the Agency shall report its conclusion:

(a) to the parents, guardian, or customary caregiver of the child;

(b) where there is no parent, guardian, or customary caregiver of the child, to a person having full-time custody or charge of the child;

(c) to any person other than a person identified under (a) and (b) whose act or omission was investigated as potentially contributing to or causing a child to be in need of intervention;

(d) to the child where, in the opinion of the Agency, the child is capable of understanding the information, except where disclosure is not in the best interests of the child; and

(e) to the person who reported the information that gave rise to the investigation, except where disclosure is not in the best interests of the child.

18.5 The Agency shall not report its conclusion under sections 18.3 or 18.4 where a criminal investigation into the matter is pending and the peace officer in charge of the investigation requests the Agency not to report its conclusion because it would jeopardize the investigation.

18.6 Where the Agency receives information that a child was or might have been abused by a person who provides work for or services to the Agency or to a child care facility or other place where a child has been placed by the Agency, the Director shall, in addition to the duties of the Agency under section 18.1, immediately report the matter to the Family Council and the Family Council shall investigate the matter and take such further steps as are required by this Law or as the Family Council considers necessary for the protection of the child and the promotion of family unity.

19. Action by Agency re: Child Pornography

19.1 If, after reviewing a report made under section 18.1, the Agency reasonably believes that the representation, material, or recording is or might be child pornography, it shall take action to protect a child by reporting the matter to a law enforcement agency and take any further action as may be set out in the Child Pornography Reporting Regulation.

20. Not to Contact Child

20.1 Where the Family Council has reasonable and probable grounds to believe that a person has subjected a child to abuse or is likely to subject a child to abuse, the Family Council may impose an order that the person:

(a) cease to reside in the same premises in which the child resides;

(b) refrain from any contact or association with a child; or

(c) do any other thing that the Family Council believes will both protect the child and promote family unity.

21. Apprehension by a Child and Family Services Provider of Another Jurisdiction

21.1 Any child apprehended by a peace officer or a child and family services provider of any other jurisdiction, whether pursuant to an enactment of the jurisdiction or by court order, must, as soon as possible, be transferred to the care and control of the Agency, which will report such apprehension to the Family Council in order for the Family Council to deal with the child in accordance with this Law.

21.2 A peace officer or child and family services provider of another jurisdiction that apprehends a child must, where practicable, provide notice of such apprehension before it occurs and if not practicable, then as soon as possible after it occurs.

21.3 A peace officer or child and family services provider that transfers the care and control of a child they apprehended to the Agency must, as soon as possible, deliver all records related to the apprehension to the Agency.

22. Apprehension by the Agency

22.1 If the Agency has reasonable and probable grounds to believe:

(a) that a child is in immediate danger; or

(b) that a child who is unable to look after and care for themselves has been left without any responsible person to care for them;

may, without authorization from the Family Council and by force if necessary, enter any premises to investigate the matter and if the child appears to be in need of intervention shall

(c) apprehend the child and take the child to a place of safety; or

(d) take such other steps as are necessary to protect the child and promote family unity.

22.2 On application by the Agency, the Family Council, if satisfied that there are reasonable and probable grounds for believing there is a child who is in need of intervention, may issue an order authorizing the Agency:

(a) to enter, by force if necessary, a building or other place specified in the order and search for the child; and

(b) if the child appears to be in need of intervention:

(i) to apprehend the child and to take the child to a place of safety, or

(ii) to take such other steps as are necessary to protect the child and promote family unity.

22.3 The fact that a child is under the care of a child care facility or hospital or the fact that the Agency has placed a homemaker or parent aide in the home in which the child has been left does not prevent:

(a) a person authorized to do so from apprehending the child as provided in this Law; or

(b) the Family Council from doing any other thing that the Family Council believes will both protect the child and promote family unity.

22.4 Where a child has been apprehended by the Agency, the Agency:

(a) is responsible for the child's care, maintenance, education, and well-being;

(b) may authorize a medical examination of the child where the consent of a parent or guardian would otherwise be required; and

(c) may authorize the provision of medical or dental treatment if:

(i) the treatment is recommended by a duly-qualified medical practitioner or dentist,

(ii) the consent of a parent, guardian, or customary caregiver of the child would otherwise be required, and

(iii) no parent, guardian, or customary caregiver is available to consent to the treatment.

22.5 Notwithstanding subsections 22.4(b) or (c), if the child is 16 years of age or older, the Agency shall not authorize a medical examination under section 22.4(b) or medical or dental treatment under subsection 22.5(c) without the consent of the child.

22.6 As soon as possible after a child is apprehended by the Agency, the Agency shall notify the parent, guardian, or customary caregiver of the child of the apprehension, including the reasons for the apprehension and contact information for the Agency.

22.7 Without limiting section 22.6, the validity of any action taken by the Agency or Family Council is not affected if the Agency, after reasonable effort, is unable to give notice to the parent, guardian, or customary caregiver of the child who is apprehended.

22.8 As soon as possible after a child is apprehended by the Agency, the Agency shall refer the matter to the Family Council, which shall order such further steps as are required by this Law or as the Family Council considers necessary for the protection of the child and the promotion of family unity.

22.9 If a child has been apprehended by the Agency, the Agency shall have exclusive care and control of the child until the Family Council determines otherwise.

22.10 Unless immediate apprehension is consistent with the best interests of the child, before apprehending a child who resides with one of the child's parents or another adult member of the child's family, the Agency or other child and family services provider must demonstrate that it made active efforts to have the child continue to reside with that person.

23. Children in Care of Agency

23.1 No person shall:

(a) without authority or an order of the Family Council, remove a child who is in the care and control of the Agency from premises in which the child is placed;

(b) induce or attempt to induce or help or attempt to help a child who is in the care of the Agency to leave the premises in which the child is placed;

23.2 Upon application by the Agency, where the Family Council is satisfied that a child has

(a) absconded from any premises where the child is lawfully placed; or

(b) without the express permission of the Agency, the Family Council, or the person in charge of the premises, left such premises or any place where the child is permitted to be

it may order the child to be apprehended by the Agency and returned forthwith to the premises where the child was lawfully placed or to another place of safety as determined by the Agency.

23.3 Where the Agency reasonably believes, considering the best interests of the child, that the Family Council cannot be convened under section 23.2 in an expedient enough time, the Agency may apprehend the child without an order of the Family Council and return them forthwith to the premises where the child was lawfully placed or to another place of safety as determined by the Agency.

24. Customary Care and Customary Adoptions

24.1 Without limiting the authority of the Family Council to make any decision or issue any order it considers necessary for the protection of the child and the promotion of family unity, the Family Council shall have the authority, in collaboration with and with the assistance of the Agency, to administer, sanction, and deal matters regarding customary care and customary adoption.

24.2 The placement of a child under a customary care arrangement, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:

(a) with a biological parent of the child;

(b) with a member of the family of the child who resides on reserve;

(c) with a member of the family of the child who resides off reserve;

(d) with an adult citizen who is not a member of the family of the child and who resides on reserve;

(e) with an adult citizen who is not a member of the family of the child and who resides off reserve;

(f) with a person who is not a citizen, but who resides on reserve; and

(g) with a member of another First Nation.

24.3 Before guardianship may be transferred under a customary adoption arrangement, the Agency must:

(a) explain to and ensure that the parent, guardian, or customary caregiver of the child who may be adopted understands their rights and the legal implications of the arrangement; and

(b) ensure each parent, guardian, or customary caregiver of the child receives independent legal advice, counselling from a knowledge keeper, or counselling from a specialized counselor of their choice.

Notes: _____

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PART E – CRITICAL INCIDENT REPORTING

25. General Duty to Report

25.1 A person who provides work or services to the Agency who reasonably believes that a critical incident has occurred in any place on reserve, including a place of safety, must report the incident to the Director.

26. Timing of Critical Incident Report

26.1 A person required to report a critical incident under this Part must report the critical incident without delay, but in any event not later than the applicable time period set out in the Critical Incident Reporting Regulation.

27. Content of Critical Incident Report

27.1 A critical incident report must include the information required by the Critical Incident Reporting Regulation.

28. Review of Critical Incident Report

28.1 Upon receiving a critical incident report, the Director must review the matter and may, as needed and as determined by the Director, investigate the incident further. The Director

may make any recommendations about the incident to Council that the Director considers necessary or advisable.

29. Death of Child in Care and Control of Agency

29.1 When a child who is in the care and control of the Agency dies, the Director shall:

(a) notify the family of the child;

(b) notify the Family Council;

(c) notify the local police service;

(d) consent to an autopsy of the body of the child; and

(e) in consultation with the family of the child, arrange for the burial or other disposition of the body of the child.

Notes: _____

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PART F – CONFIDENTIALITY

30. Confidentiality of Records

30.1 Subject to this article 30, a record made under this Law is confidential and no person shall disclose or communicate information from the record in any form to any person except:

(a) as necessary in a proceeding before the Family Council or Special Hearing Board;

(b) by order of the Family Council or Special Hearing Board;

(c) to the Agency;

(d) to a person employed, retained, or consulted by the Agency;

(e) by the Agency to another child and family services provider with jurisdiction over the child where reasonably required by that child and family services provider:

(i) to provide services to the person who is the subject of the record, or

(ii) to protect a child;

(f) to a student placed with the Agency by contract or agreement with an educational institution;

(g) where a disclosure or communication is required for the purposes of this Law, including for the provision of child and family services; or

(h) where a disclosure or communication is otherwise required by law.

31. Right of Access to Records

31.1 An adult citizen is entitled to be given access to:

(a) their own record; and

(b) the record of a child who is in their legal care.

32. No Liability for Disclosure or Communication

32.1 No liability attaches to the Agency or any person who discloses or communicates information in accordance with the Part F if such disclosure or communication is made in the administration of this Law or for the protection of a child.

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PART G – DISPUTE RESOLUTION

33. Review of Decision of the Agency

33.1 The following persons, when directly affected by a decision of the Agency under this Law, may request in writing, within 30 days of the decision, that the Family Council review the decision:

(a) a child;

(b) a parent, guardian, or customary caregiver;

(c) a member of the family of a person under (a) or (b);

(d) a person who is refused child and family services by the Agency; or

(e) an applicant for a new or renewed licence who is refused such a licence.

33.2 A request for review of a decision under section 33.1 must set out:

(a) the decision in sufficient detail for the Family Council to be able to identify it; and

(b) the grounds for the review.

33.3 On completing a review, the Family Council may:

(a) with the agreement of the parties, direct that the dispute be mediated by a mediator appointed by the Family Council;

(b) uphold the decision that has been reviewed; or

(c) direct the Agency to review and reconsider the decision.

34. Appeal of Decisions by Family Council

34.1 Appeals of decisions by the Family Council may be made to the Special Hearing Board in accordance with the processes and requirements established by MKO.

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PART H – OFFENCES

Notes: _____

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PART I – TRANSITIONAL

35. Child in the Care and Control of a Province or Other Child and Family Services Provider

35.1 Upon the coming into force of this Act, subject to the terms of any coordination agreement, the current status of a child in the care and control of a province or child and family services provider of any jurisdiction continues until any further decisions are made with respect to the child, at which time the province or child and family services provider must consult the Agency.

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PART J – OTHER MATTERS

36. Amendment

36.1 This Law may only be amended with/by…

37. Five-Year View

37.1 Every five years after the day on which this Law comes into effect, the Nation, in collaboration with the Agency and the Family Council, must undertake a review of the provisions and operation of the Law.

38. Coming into Effect

38.1 The Law will come into effect on the later of:

(a) the date set by a resolution of Council; or

(b) the commencement date of coordination agreements between the Nation and both Manitoba and Canada.

Matters for Consideration in a Coordination Agreement

The following matters should be considered when a member First Nation is negotiating its coordination agreement(s). In some cases, this will be for the purpose of integrating into existing regulatory/administrative structures that may be advantageous for a member First Nation to be connected to (e.g. the child pornography reporting regime, Manitoba's child abuse registry). In other cases, the member First Nation will need certain matters to be addressed in a coordination agreement in order for the related provisions of their law to be effective.

- Allowing for various professional to report information that a child may be in need of intervention without penalty (section 17.3)
- Reporting of child pornography (sections 17.4-17.6)
- The Agency putting off reporting on an investigation as a result of an ongoing criminal investigation (section 18.5)
- Apprehension of a child by a child and family services providers of another jurisdiction (article 21)
- Apprehension by Agency off reserve (article 22)
- Assistance of peace officers in apprehension by Agency (sections 22.1 and 22.2);
- Critical incident reporting (Part E)
- Extension of child and family services to vulnerable persons (see MB's *The Vulnerable Persons Living with a Mental Disability Act*)
- Licensing of child care facilities (section 8.10(c) and article 15)
- Standards for and licensing of child care homes/centres—essentially, day cares (see MB's *The Community Child Care Standards Act*)
- Integration into Manitoba's child abuse registry
- The role of Manitob's Children's Advocate
- Provision of services to non-citizens by the Agency (section 4.7)
- Prosecuting/enforcing offences (Part H)

Notes: _____

Manitoba Keewatinowi Okimakanak Inc.

Child Welfare Secretariat (CWS)

HEAD OFFICE
Nisichawayasihk Cree Nation
Nelson House, MB R0B 1A0
Phone: (204) 927-7500
Toll Free: 1-800-442-0488

WINNIPEG SUB OFFICE
102-1700 Ellice Avenue
Winnipeg, MB R3H 0B1
Phone: (204) 927-7500
Fax: (204) 927-7509
Toll Free: 1-800-442-0488

THOMPSON SUB OFFICE
206-55 Selkirk Avenue
Thompson MB R8N 0M5
Phone: (204) 677-1600
Fax: (204) 778-7655
Toll Free: 1-800-442-0488