

**Manitoba Métis CFS Implementation Report –  
*The MMF Approach to Implementation***

**Submitted to the 52<sup>nd</sup> Annual General Assembly**

**March 27 & 28, 2021**



Draft

***Bill C-92 – An Act Respecting First Nations, Inuit and Métis children, youth and families:***

Bill C-92, also known as *An Act Respecting First Nations, Inuit and Métis children, youth and families* (the “Federal Act”), is a step forward in the process of reconciliation with Canada’s Indigenous peoples, including the Métis Nation’s Manitoba Métis.

In the official printed-copy of the Federal Act there is a SUMMARY which reads:

*This enactment affirms the rights and jurisdiction of Indigenous peoples in relation to child and family services and sets out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children, such as the best interests of the child, cultural continuity and substantive equality.*

Prior to the January 1<sup>st</sup>, 2020 enactment of the Federal Act, the Manitoba Metis Federation (“MMF”) has acted in the best interests of our children. We will continue to do so.

The Federal Act is part of Canada’s plan to renew the relationship between Canada and Indigenous peoples and make meaningful reform of child welfare nation-wide and recognize the critical importance of self-determination and self-government in our caring for our children.

This Act shifts the child welfare system away from a protection focus to culturally appropriate prevention, early intervention, and family reunification and returns our children’s care back to our families and community.

The purpose of the Act is to:

- affirm the inherent right of Indigenous self-government, which includes jurisdiction in relation to child and family services; and
- set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children.

A brief outline of some of the sections of the Act include:

- ***Sections 9-10 – Best Interests of the Indigenous Child:*** among other things, includes this principle making it clear that the best interests of the child must be a primary consideration in making decisions or taking actions;
- ***Sections 11-15 – Shift from Protection to Prevention:*** among other provisions, includes an emphasis on preventative care, including prenatal care, and disallows the apprehension of an Indigenous child solely as a result of their socio-economic conditions;
- ***Sections 16-17 – Connection to Family, Community and Culture:*** outlines the order of placement; and highlights the importance of maintaining attachment and emotional ties to family; and

- **Section 20–24 – Exercising Jurisdiction:** sets out the requirements for entering into a Coordination Agreement; gives Indigenous laws force of federal law; and states that if a conflict arises between Indigenous laws and federal or provincial laws, the Indigenous laws supersede the federal or provincial laws.

### **Implementation First Principles:**

As the MMF moves forward implementing our jurisdiction and authority in Manitoba Métis CFS, the MMF transition and delivery approach will apply principles that include:

1. **Best Interests of the Child:** consistent with the Federal Act, enhanced in consultation with the Manitoba Métis Community (or “Manitoba Métis”), and following best practices;
2. **Pro-Active Métis Child Welfare Model:** while acknowledging that in the short to mid-term the existing *protection model* cannot be abandoned and must have increased capacity, the MMF objective is a *Reform Model* focused on pro-active restorative and prevention approaches;
3. **Use Existing Métis Authority and Agencies:** the existing institutions currently under provincial mandate law would be moved under MMF jurisdiction and authority subject to Métis Laws to facilitate transition, to avoid service gaps and uncertainty, and to promote uninterrupted staffing expertise, and continuing financial resources;
4. **Manitoba Métis CFS Laws and Policies:** in the immediate short-term, the Manitoba Métis CFS Laws (“Métis CFS Laws”) and policies governing the Authority and Agencies will be consistent with existing Manitoba Laws acting as templates with essential modifications. Moving forward, in transition, through consultations, the Métis CFS Laws will be modified accordingly;
5. **MMF Mandate:** the MMF represents the Manitoba Métis, not any other government or organization whether allegedly Métis, pan-aboriginal, or national;
6. **MMF as the Manitoba Métis Government has Full Jurisdiction and Authority for Métis CFS:** the MMF has the mandate which includes, but is not limited to:
  - a. *MMF to Make and Enforce Métis CFS Laws* – in exercising our jurisdiction and authority, and respecting rules, standards, reporting, and delegating rights and responsibilities, etc., for Métis CFS;
  - b. *MMF to Establish Métis Decision-Making Tribunals* – customary mechanisms appropriate to address and fairly and equitably resolve issues;
  - c. *No Provincial or Federal Dominant Regulations* – other jurisdiction’s laws cannot supersede over Métis CFS Laws without our consent;

7. ***Flexible, Multi-Year, Block Funding:*** necessary stable and predictable funding without interruption during the transition and for full implementation and operations; and
8. ***Cooperation with Other Jurisdictions:*** the MMF will welcome working with other jurisdictions, as appropriate, for coordination, service gaps prevention, emergency services, joint intake processes, dispute resolution, data sharing and information requirements.

***Required Notifications, Progress and the One-Year Clock:***

As set out in the Federal Act, the MMF provided our section 20 notice to the federal and provincial Ministers in November 2019 with a one-year “clock” starting on January 1<sup>st</sup>, 2020. Our one-year timeframe passed on January 1<sup>st</sup>, 2021.

As stated in the Federal Act, one year after submitting the section 20 notice, after good faith attempts to reach a *Coordination Agreement*, the Métis CFS Laws, if already enacted by MMF Cabinet become the law. MMF Cabinet has not as yet passed our laws.

Due to delays from both levels of government, and in the best interest of our children, we have extended these discussions.

One of these delays is the fact that Canada initially took the position that the Federal Act required our Métis CFS Laws to be submitted along with a formal submission before the one year would start to run. We made a second submission on July 3<sup>rd</sup>, 2020, with our Métis CFS Laws, but Canada has since backtracked on that requirement.

***Coordination Agreement:***

*Coordination Agreements* described in section 20 of the Act give the MMF as the Indigenous Governing Bodies (“IGB”), the legislative authority to establish our own child welfare laws, including Acts, and policies. A *Coordination Agreement* is intended to establish how the federal and provincial government’s system will interact with our new child welfare system. The ability to conclude an agreement will require a significant amount of cooperation between the IGB, in this case the MMF, Canada, and the province, in this case Manitoba.

Meetings with Canada and Manitoba take place on a monthly basis. In the near future, the main table will be meeting bi-weekly and there will be working groups (subcommittees) to cover specific topics as needed.

The purpose of these meetings is to develop a *Coordination Agreement* that sets the ground rules for the operation of a Métis CFS system in the complex jurisdictional and authoritative environment. A *Coordination Agreement* will outline:

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- Provision of emergency services;
- Support measures;
- Fiscal arrangements; and
- Any other coordination measure related to the effective exercise of the MMF Manitoba Métis legislative authority.

The province of Manitoba has, to date, only been willing to participate as an “observer” which brings the unique challenge of being in attendance but not providing substantive input. We will continue to press the Province to fully participate at the table towards completing a *Coordination Agreement* to coordinate our operations. If we continue our good faith attempts to reach an agreement but are unable to make significant progress, we may require a decision to move forward without an agreement.

#### ***From Provincial Laws to our Métis CFS Laws:***

Despite the Métis CFS Authority and our two agencies operating under provincial law, an MMF process appoints the Métis Authority Board of Directors which governs the two mandated Agencies.

It is anticipated that the Authority and Agencies will continue to use the applicable provincial law until the date upon which the applicable Métis CFS Laws come into force.

The MMF already prepared six Manitoba Métis CFS Acts (“Métis CFS Acts”) that are consistent with the current Manitoba CFS-related Acts but modified as required in order to be Manitoba Métis-specific.

For clarity, the Métis CFS Acts form part of and contain the Métis CFS Laws.

The Métis CFS Acts as currently written are intended to be in most cases temporary and are anticipated to be modified, and in some cases replaced, as we move forward.

This was done to ensure stability, avoid service gaps, and minimize confusion while moving from operating under Manitoba Laws into operating under Métis CFS Laws.

By using the six immediate and directly applicable Province of Manitoba Acts as models, the MMF has developed a set of six draft Métis CFS Acts. These are:

1. ***The Manitoba Métis Child and Family Services Act:*** sets out the core laws of how our Manitoba Métis CFS will be provided;
2. ***The Manitoba Métis Child and Family Services Authority Act:*** establishes the Manitoba Métis CFS Authority as entirely our own;

3. ***The Manitoba Métis Adoption Act:*** sets out how the adoption of Manitoba Métis children will be managed;
4. ***The Manitoba Métis Social Services Appeal Tribunal Act:*** creates a process to hear Social Service appeals, such as foster home licensing;
5. ***The Manitoba Métis Protecting Children Information Sharing Act:*** contemplates information and data and governs how the information and data of Manitoba Métis children in care will be shared; and
6. ***The Manitoba Métis Advocate for Children and Youth Act:*** creates a Manitoba Métis Advocate for Children and Youth to investigate critical incidents of our children in care.

Some of the immediate technical changes made to the six Manitoba's CFS-related Acts to make these our Métis CFS Acts included:

- Changing references from Lieutenant Governor in Council to MMF Cabinet;
- Changing references from Manitoba's Minister to the MMF's Minister as appointed by the MMF President and ratified by the MMF Cabinet;
- Changing "Manitoba" to "Manitoba Métis Community";
- Altering definitions and positions to fit within our existing MMF self-government; and
- Changing references to the provincial Legislative Assembly to the MMF Cabinet or MMF Annual General Assembly as appropriate to the context.

There are more revisions anticipated to be done.

These six Métis CFS Acts refer to each other and are, for the most part, self-contained and independent of provincial and federal Acts. That said, in addition to the reference to the Federal Act, there are references to a number of external provincial Acts and institutions upon which the Authority and Agencies may continue to access or rely on, including, possibly for instance, a relationship with Manitoba's *Child Abuse Registry* and *Adoption Registry*.

As per *An Act Respecting First Nation, Inuit, and Metis children, youth, and families*, if a provision of one of our Acts is inconsistent or in conflict with a provision of any Manitoba Acts, after the one-year mark, our Métis CFS Laws will prevail unless otherwise stated within our Acts.

Part of this transition may require Manitoba to repeal a portion of its *Manitoba Child and Family Services Authorities Act*, and other relevant Acts and Regulations so that they clearly indicate that the Métis CFS system is no longer under Manitoba jurisdiction.

***Further Revisions to the Métis CFS Laws:***

Some of the further anticipated changes to the Métis CFS Laws will result from workshops with our Authority and Agencies, expert reviews, and the community consultation process, as well as during the negotiations of the Coordination Agreements, and while not being exhaustive may include:

- Authority and Agencies' legal personalities and transition from existing Provincial jurisdictions and authorities to those of Métis CFS Laws;
- Temporary and permanent orders;
- Offenses, penalties and enforcement (procedures, tribunals, alternatives, and diversions);
- Aging out provisions;
- Facilitating early and preventative and restorative actions; and
- Definitions, such as care-caregiver, etc.

***Consultations:***

The MMF recently held a consultation forum on March 16<sup>th</sup> & 17<sup>th</sup>, 2021, on CFS and our implementation of the Federal Act. As usual, the input gathered from this engagement with our Citizens and Elders was valuable and we will continue to host forums and workshops with a variety of groups that have an interest in and will be able to contribute to our laws, policies, and procedures.

Beyond this, we are using the nearly two decades of direct hands-on experience that we have working closely with our service providers, the Métis CFS Authority and our two Agencies, on the development of our laws, policies, and procedures.

***Next steps:***

The next steps in the MMF implementing our CFS jurisdiction and authority:

- To reach a Coordination Agreement between the MMF, Canada, and Manitoba;
- Draft, amend, and implement the Manitoba Métis CFS Laws; and
- Complete the transfer of the Authority and Jurisdiction of Manitoba Métis CFS to the MMF as the government of the Manitoba Métis.

**Recommendations:**

**1. Manitoba Métis CFS Jurisdiction and Authority:**

The MMF take all necessary actions, including community consultation as may be appropriate, to fully implement the Manitoba Métis jurisdiction and authority for Manitoba Métis child and family services (CFS);

**2. Manitoba Métis CFS Laws:**

The MMF President, with the approval of Cabinet, develop, amend, and pass any required temporary or long-term Manitoba Métis CFS Acts and Laws;

**3. Coordination Agreement:**

The MMF negotiate in good faith towards the goal of entering a coordination agreement with Canada and Manitoba, and if the MMF President determines an agreement is not possible, then, with the approval of Cabinet, the President is authorized to take such course of action as is deemed reasonable;

**4. Authority to Enter Agreements:**

The MMF President, or the President's delegate, with the approval of Cabinet, has the authority to enter into and sign any and all necessary agreements or documentation to implement the above recommendations; and

**5. Motion by the Assembly:**

A motion be sought from the 52<sup>nd</sup> Annual General Assembly accepting this **Manitoba Métis CFS Implementation Report** as distributed and presented, endorsing, agreeing with, authorizing and fully supporting its approach and recommendations for the implementation of the Manitoba Métis jurisdiction and authority recognized in the *Act respecting First Nations, Inuit and Métis children, youth and families*, formerly known as Bill C-92.

**Summary:**

Bill C-92, now known as *An Act Respecting First Nations, Inuit and Métis children, youth and families*, and our MMF Manitoba Métis CFS Implementation approach, with recommendations, represents a critically important opportunity for renewing our partnership with Canada, implementing our authority and jurisdiction, and strengthening our ability to build effective proactive initiatives for the health of our children, our families, and our community.