



MAW-KLEYU'KIK KIJANNAQ

**MAW-KLEYU'KIK KIKMANAQ CUSTOMARY CODE
FOR THE MI'KMAQ OF NOVA SCOTIA**

DRAFT #11 – last updated August 12, 2024

Introduction to the Maw-Kleyu’kik Kikmanaq Customary Code

Since time immemorial, the Mi’kmaq of Nova Scotia were gifted from the Creator, the inherent jurisdiction and sovereignty to govern themselves including the right to care and provide for their children and families. This inherent right has been recognized and affirmed under s.35 of the *Constitution Act, 1982* of Canada, further supported by the United Nations Declaration on the Rights of Indigenous Peoples, and consistent with Mi’kmaw Aboriginal and Treaty rights.

The Mi’kmaq of Nova Scotia reclaim their right and authority to exercise complete jurisdiction and governance over child and family well-being matters both on and off the reserve. In doing so, the Mi’kmaq have created and established a Mi’kmaw child and family well-being system that is governed by a Mi’kmaw Customary Code, regulations, policies, and a framework that supports Mi’kmaw families, with services and supports that incorporate Mi’kmaw culture, tradition, and language that are integral to the well-being of Mi’kmaw communities and the Nation.

Canada’s creation and operation of residential schools, day schools and the “sixties scoop” and other colonial policies and practices are but some of their policies that have created harm and intergenerational trauma throughout First Nation and Indigenous communities. It is a result of these historic harms and injustices that the Mi’kmaq of Nova Scotia are reclaiming their inherent jurisdiction and sovereignty to care for and protect their own children from harm.

This Maw-Kleyu’kik Kikmanaq Customary Code is created by Mi’kmaq for Mi’kmaq. The Mi’kmaq acknowledge that their families may include non-Mi’kmaq and culturally diverse members and their culture and traditions should be respected. It is a living document that is evolving the delivery of wholistic and cultural child and family well-being services designed to support and maintain Mi’kmaw children and families staying together whenever possible.

Mi’kmaw children do best when they are raised by their family and connected to their community and Nation, and when their environment is safe and free from harm. This Customary Code is intended to promote happy and healthy families and pride in being Mi’kmaq through connectedness to culture, tradition, language, and the land.

Grand Chief Norman Sylliboy of the Mi’kmaw Grand Council shared with us these instructional words of wisdom told to him by his grandfather, the former Grand Chief Gabriel Sylliboy, “Our Nation is rich if our Nation is healthy.”

Acknowledgement and Honour

The Mi'kmaq of Nova Scotia take this time to humbly and respectfully thank all who have contributed their time, input, effort, and dedication to the development of this Maw-Kleyu'kik Kikmanaq Customary Code, which includes Elders, Mi'kmaw language speakers, Knowledge Holders, story tellers, Mi'kmaw Grand Council, Chiefs and Councils, [Community members] Mi'kmaw youth, Mi'kmaw Family and Children's Services, retired Mi'kmaw social workers, Mi'kmaw service providers, organizations, researchers, lawyers, allies, and other Nations doing similar work.

The Mi'kmaw of Nova Scotia also honour the contributions of our ancestors who have left for the spirit world.

Our Mi'kmaw Beginnings and Foundations

The Mi'kmaq Creation Story teaches how Mi'kmaw life began for all things, the Mi'kmaw interconnectedness, and the lessons learned from one another.

The Mi'kmaq Creation story provides the Mi'kmaq with principles, values, and teachings to support nurturing and loving families.

Mi'kmaw Creation Story of Kluskap and His Family

Every Culture, from every corner of this Planet Earth, has their very own version of a Creation Story. This is but one of ours.

We, the Mi'kmaw people, believe that all life was created by one, all-powerful and ultimate Creator, known as Kji-Niskam (*the Great Spirit*). First, He created all the Heavens, Sun, Moon, Stars, Planets, including this Planet, Earth. Then He filled it with Water, Land and Mountains, Trees, Plants, and the Animals, all the Mammals, Reptiles, Amphibians, Fish, Birds, and Insects, and within each of them, He gave Spirit.

After Kji-Niskam created a place to live, He then thought he'd populate it with people. The first of His human creations was Kluskap. Kji-Niskam didn't just pop Kluskap on to this Earth. He created Him in Mi'kma'ki from the Red Clay of “Metoqwatkek,” that means “where the bushes extend down the bank.” That place is now known as the Minas Basin, in the Bay of Fundy, close to the cliffs of what is now known as Cape Blomidon. Being created from the mud of the Bay of Fundy is what gives us, the Mi'kmaw people, our reddish-brown skin colour.

The Great Spirit cast a single bolt of lightning that struck the sands of the Bay of Fundy's red mud. It sculpted what looked to be a shape of a man. But the sculpture stood there still and lifeless. Then Kji-Niskam threw the second bolt of lightning hitting the person-like figure, and it brought him to life.

With Kluskap's eyes wide in amazement, he drew in his first breath, then his eyes even grew wider with the first sound he heard, the sound of his own heart beating in his chest. Kluskap was so frightened he tried to run, but he couldn't move. His feet were like the roots of a tree, still rooted and connected to the Earth and he was stuck there. All Kluskap could do was to observe and learn. Kluskap stayed there a long while, all that time watching over all of the Nature and Natural world around him. He learned a lot from the Animals and environment he was connected to.

When Kji-Niskam thought Kluskap was ready, He sent down the third and final bolt of lightning, striking Kluskap and setting his feet free from the Earth. Now Kluskap could move about. Kluskap set out on his first journey to explore the rest of Mi'kma'ki. Kluskap saw many of the creatures of Kji-Niskam's creations. Kluskap saw a large bird flying in the Sky, flying higher than all the other birds. It was Kitpu, Kji-Niskam's messenger, the Eagle. The Eagle was the first of all the Animals to talk to Kluskap and what he said was, "I am Kitpu and Kji-Niskam has sent me to tell you that you are going to meet other Humans on your journey; these other people are members of your family." And then Kitpu left Kluskap, and as he flew away, one single Eagle Feather fell off from one of his wings. Before it landed on the ground, Kluskap caught it and kept it as a reminder of his connection to the Great Spirit and of all His creations.

Kluskap walked the shores of the beach and he saw a Sandy Rock. This rock was different than the rest. It was glittering and shiny. Steam started to come from the rock and then it started to change its shape. When it had stopped, it was in the form of an Old Elderly Mi'kmaw Woman.

Kluskap asked her, "Who are you?" Her answer was, "I am Nukumi. I am your Grandmother and Kji-Niskam has created me with this form, an Elder Woman filled with the knowledge and wisdom to teach you how you are to proceed with your life here in Mi'kma'ki. I can show you and teach you many valuable lessons that will make your journey easier. You have observed many things in this place, and you have seen many of the animals. Everything here has a purpose and a reason. I will teach you how they all work together."

Kluskap was so happy to meet his Grandmother that he said, "We must celebrate." He called to all the animals, "Come and celebrate with me, I have someone I want you all to meet." When all the animals had gathered together, Kluskap said to the animals, "This is Nukumi, she is my Grandmother. We must prepare a feast." Kopit, the Beaver said, "I will gather some wood." Robin said, "I will fly back to where the lightning struck and get some sparks from the lightning to start a fire." The rest of the animals said they would go into the forest to gather plants and berries in order to feed. They all went their separate ways to gather and harvest the foods they could. On their return they shared a great meal fit for everyone to enjoy. Kluskap said to Nukumi, "I feel like resting a while after that large feed." Nukumi said, "No! We must continue on our journey," and off they went down along the beach.

They traveled for two days and came to a place where the air smelled very sweet with the odor coming from a plant. Nukumi said, “See that plant growing in the foam from the waves? The name of that plant is “welima’qji’jkewe’l”, sweetgrass.” Again, the plant started to steam and change its shape. This time it changed into the shape of a young man. The young man said, “My name is Martin, I am your Brother. I am young, very strong, and fast as the winds. Kji-Niskam sent me here to help you on your journey. Kji-Niskam has given me the power to see the future. Knowing what will happen in the future will help you to prepare for the days to come.” Kluskap again was pleased to meet another member of his family. This time Kluskap called on all of the Fish of the waters to prepare a feast to celebrate the creation of his Brother, Martin. After another meal of fish and water plants, they rested.

Setting off again, now a family of three, Kluskap, Nukumi, and Martin, they traveled for two more days. After walking for such a long time Kluskap grew tired and sat on a rock next to a tree. He watched as one leaf started to move, then shake. It started off green in colour, then changed from green to yellow to orange, and then to red. As Kluskap watched the leaf turn colour and shake, it blew off of the tree and landed on the ground. And again, it started to steam and change. Kluskap, seeing this before, knew he was going to meet another member of his family. The leaf turned into a woman.

Kluskap said: “And who would you be?” She said, “I am Kiju, I am your Mother. I have been given the form of a Mother by Kji-Niskam, and as a Mother, I bring life into this world. And I bring understanding to all my children, so they will learn to survive and to live, and to understand their connection to every plant and creature here on Earth, and that as family, we must learn to work with each other in Harmony.”

So Kluskap was happy that his Mother came into the world. He called for his Grandmother and Brother to prepare a feast for the creation of his very own Mother. For the first feast, to celebrate his Grandmother, he called on all the animals. For the second feast, in celebration of his Brother, he called on all the creatures of the waters. So, for the feast and celebration of his Mother, he called on the services of all the plants, trees, and even the roots that grow under ground. Kiju said, “These things that we gather are more than food that gives us nutrition, they also give us medicines to help us grow and heal.” And with all the teachings from his family, and through the guidance of Kji-Niskam, the Creator, Kluskap taught the lessons that all the people and animals needed to live here in Harmony, and that is how it all started.

[Add link to video](#)

Mi'kmaw Sacred Teachings

The Seven Sacred Teachings of the Mi'kmaq are an interconnection of teachings of respect for each other, the relationship with all living things, and the Mi'kmaw culture. The teachings guide us in the way we interact and treat each other.

The Mi'kmaq are gifted with the following Seven Sacred Teachings that came from the writings of the late Helen Sylliboy of Eskasoni First Nation; granddaughter of the late Grand Chief Gabriel Sylliboy:

Kepmite'teken – Respect

To honour all creation is to have respect. All of creation should be treated with respect. You must give respect if you wish to be respected. Some communities instead use mukkwepsite'tekew or mukkwawnasitutmu.

Tetpaqa'q – Truth

Truth is to know all of these things. Speak the truth. Do not deceive yourself or lie to others.

Melknamk – Bravery

Bravery is to face the foe with integrity. In the Mi'kmaq language, this word literally means “state of having a fearless heart.” To do what is right even when the consequences are unpleasant. Some communities instead use either Mlkita'si (“state of having a strong thinking”) or Mukkwjipasiw (“state of not showing fear”).

Nsituo'qn – Wisdom

To cherish knowledge is to know wisdom. Wisdom is given by the Creator to be used for the good of the people. This word expresses not only “wisdom,” but also means “prudence,” or “intelligence.” In some communities, Kjjitaqn is used; in addition to “wisdom,” this word can also mean “intelligence” or “knowledge.”

Wanqwajite'teken – Humility

Humility is to know yourself as a sacred part of Creation. In the Mi'kmaq language, this word can also mean “compassion.” You are equal to others, but you are not better. Some communities instead express this with Wantaqo'ti, which in addition to “peace,” can also be translated as “calmness,” “meekness,” “gentility,” or “patience.”

Kesaltultimk – Love

To know love is to know peace. Love must be unconditional. When people are weak, they need love the most. In all the Mi’kmaq language, this word with the reciprocal theme /tul/ indicates that this form of love is mutual. In some communities, kesite’tmn is used, which in most contexts means “treasure it” but in this context is translated as either “love” or “zeal.”

Koqwajeyumk – Honesty

Honesty in facing a situation is to be brave. Always be honest in word and action. Be honest first with yourself, and you will more easily be able to be honest with others. In the Mi’kmaq language, this word can also mean “righteousness, doing what is right.”

Contents

Introduction to the Maw-Kleyu’kik Kikmanaq Customary Code	1
Acknowledgement and Honour	2
Our Mi’kmaw Beginnings and Foundations.....	3
Mi’kmaq Creation Story of Kluskap and His Family	3
Mi’kmaw Sacred Teachings.....	6
1.0 PREAMBLES	14
2.0 TITLE	15
3.0 INTENT AND SPIRIT OF THE CUSTOMARY CODE.....	15
4.0 DEFINITIONS AND INTERPRETATIONS	16
5.0 JURISDICTION.....	24
5.1 Jurisdiction.....	24
5.2 Purpose.....	24
5.3 Scope of Customary Code	25
5.4 Human Rights and Freedoms Application	25
6.0 CUSTOMARY CODE-MAKING, APPROVAL AND PUBLICATION.....	26
6.1 Customary Code-Making.....	26
6.2 Approval of Customary Code.....	26
6.3 Publication of Customary Code	26
6.4 Conflict.....	26
6.5 Stronger Ties.....	27
6.6 Severability	27
6.7 Interpretation	27
6.8 Aboriginal and Treaty Rights Application and Recognition	28
6.9 Rights not Affected.....	29
6.10 Mi’kmaw Culture, Traditions and Language Principles	29
6.11 Administration and Authority of the (? MGB or Assembly)	30
6.12 Mi’kmaw Principles Governing the Customary Code.....	30
6.12.1 Basic Principle	30
6.12.2 Guiding Principles informed by Guiding Values.....	30
6.13 Protection of Mi’kmaw Sacred Objects, Ceremonies, Practices, Days and Events	32
7.0 PRIORITY TO PREVENTION AND EARLY HELP	33

7.1	Principle	33
7.2	Coordination with Service Providers	33
7.3	Priority to Prenatal Care	33
7.4	Socio-economic Conditions	33
7.5	Active Efforts	33
8.0	BEST INTERESTS OF A MI’KMAW CHILD	34
8.1	Principles	34
8.2	Primary Considerations	34
8.3	Factors to be Considered.....	35
8.4	Cultural Continuity.....	36
8.5	Substantive Equality	36
9.0	COMMUNITY SUPPORT	37
9.1	Principle	37
9.2	Community Support Providers.....	38
9.3	Contributions from Community Support Providers	38
9.4	Role of Band Designate	39
10.0	DUTY TO REPORT	40
10.1	Duty to Report Harm to a Child	40
10.2	Duty to Report Location of Mi’kmaq Child	40
10.3	Confidentiality and Privilege	40
10.4	Civil Liability	40
10.5	Solicitor and Client Privilege.....	40
10.6	Consequence of Failure to Report.....	40
10.7	Penalty for Malicious Reporting	40
11.0	[AGENCY] FUNCTIONS AND AUTHORITY.....	41
11.1	Principles	41
11.2	Functions of the [Agency].....	41
11.3	Social Worker’s Family Preservation Inquiry Authority.....	42
11.4	Orders for Production.....	43
11.5	Order for Access or Entry	44
11.6	Police Officer Involvement	45
11.7	Detention of Mi’kmaq Child by Police Officer	45

11.8	Abandonment of a Mi’kmaw Child Principle.....	46
11.9	Abandonment Of Mi’kmaw Child	46
11.10	Voluntary Relinquishment.....	47
11.12	Death of Parent(s) or Caregiver	47
11.13	Death of Mi’kmaw Child	48
11.14	Mi’kmaw Child Withdrawing or Missing from Care	48
12.0	SERVICES AND SUPPORTS.....	49
12.1	Principle.....	49
12.2	Voluntary Support Services for Mi’kmaw Child and Family	49
12.3	Services and Supports to Promote the Integrity of Family	50
12.4	Services and Supports for Carers.....	51
12.5	Duty to Provide Services and Supports to a Mi’kmaw Child.....	51
12.6	Voluntary Placement Agreement	52
12.7	Effect of Services for Mi’kmaw Child.....	53
12.8	[Agency] Services, Supports and Program Collaboration.....	53
12.9	Voluntary Services and Programs for Parent(s) or Caregiver.....	54
12.10	Term of Service	54
12.11	Mi’kmaw Family Healing Centres	54
12.11.1	Principle.....	55
12.12	Mi’kmaw Family Healing Centre Services.....	55
12.13	Facilities and Programs	55
	Principle 55	
12.14	Development, Operation, and Maintenance of Facilities and Programs.....	56
13.0	ENTRY PATHWAYS.....	56
13.1	Entry Pathways	56
13.2	Wikimanej Kikmanaq Circle.....	56
13.2.1	Principle	56
13.3	Wikimanej Kikmanaq Circle Role and Authority	57
13.4	Wikimanej Kikmanaq Circle Process	57
13.5	Agreements and Orders involving the Wikimanej Kikmanaq Circle	58
13.6	Tribunal	58
13.6.1	Principle.....	58

13.7	Tribunal Role and Authority	58
13.8	Tribunal Family Preservation Orders.....	59
13.9	Refusal to Consent to Medical Treatment	60
13.10	Other Tribunal Orders.....	61
13.11	Duration of Orders.....	61
13.12	Extension of Agreements or Orders	61
13.13	Continuation of Extended Care Order Beyond Age 19 Years.....	62
13.14	Multiple proceedings	62
13.15	Judicial Review	62
13.16	Appeals.....	62
13.17	Elders Lodge.....	62
14.0	NOTICE PROVISIONS	63
14.1	Notice of Significant Measures	63
14.2	Parties to Proceeding	64
14.3	Mi’kmaq Child as Party and Representation	65
15.0	FAMILY PRESERVATION	65
15.1	Principles Governing Family Preservation Support by the [Agency]	65
15.2	Mi’kmaq Child who Needs Family Preservation.....	66
15.3	Method of Bringing into Care	68
15.4	Action following Bringing into Care of the Mi’kmaq Child.....	68
16.0	PLACEMENT OF A MI’KMAW CHILD	68
16.1	Mi’kmaq Child Placement Principles.....	69
16.2	Priority of Placement	69
16.3	Voluntary Removal of Parent(s) or Caregiver from Home.....	70
16.4	Placement With or Near Siblings or Other Children	70
16.5	Customs and Traditions in Placement	70
16.6	Family Unity and Reunification of Mi’kmaq Children in Care	70
16.7	Attachment and Emotional Ties.....	71
16.8	Temporary Care and Extended Care Placements	71
16.9	Transitioning to Independence	71
16.9.1	Principle	71
16.10	Transitioning to Independence of Mi’kmaq Child or Young Adult.....	72

17.0 CUSTOMARY CARE	72
17.1 Principles	73
17.2 Customary Care Placement.....	73
17.3 Minor Parent.....	74
17.4 Continued Application of the Customary Code in Customary Care.....	74
18.0 SECURE CARE.....	74
18.1 Principle.....	74
18.2 Tribunal Secure Care Certificate	75
18.3 Secure Care Order	75
18.4 Tribunal Review of Secure Care Order.....	76
18.5 Duty of Tribunal and Appeal	77
18.6 Effect of Secure Care (Certificate and) Order	78
18.7 Leave of Absence or Transfer from Secure Care Facility	78
18.8 Authority of Secure Care Certificate or Order	78
19.0 MI’KMAW ADOPTIONS	79
19.1 Mi’kmaw Customary Adoption Protocol: Ankweiwanej Knijannaq.....	79
19.2 Mi’kmaw Customary Adoption Recognition	80
19.3 Customary Adoption Requirements	80
19.4 Mi’kmaw Customary Adoption Support	81
19.5 Mi’kmaw Non-Customary Adoption	81
19.6 Mi’kmaw Inter-Provincial Adoption	81
(Working on this)	81
19.7 International Adoption of a Mi’kmaw Child	81
20.0 CHILD ABUSE REGISTER.....	81
20.1 Harm Defined for Child Abuse Register.....	81
20.2 Child Abuse Register	82
20.3 Notice of entry in and application to remove name from Child Abuse Register	83
20.4 Appeal respecting Child Abuse Register	83
20.5 Confidentiality of Information in Child Abuse Register.....	83
20.6 Former Child Abuse Register.....	84
21.0 GENERAL.....	85
21.1 Binding Provision	85

21.2 Protection from Liability	85
21.3 Indemnification	85
21.4 Prohibitions	86
21.5 Action and Punishment	86
21.6 Computation of Time	87
21.7 Review and Amendment of the Customary Code.....	87
21.8 Report by the [Agency]	87
21.9 Mi’kmaq Governing Body Resolutions	88
21.10 Ownership of the Customary Code	88
21.11 Regulations	88
21.12 Provincial Mi’kmaq File Transfer to Mi’kmaq Governing Body.....	89
21.13 Coming into Force	89

DRAFT

1.0 PREAMBLES

- a) Mi'kmaw children are the most precious gift to the Mi'kmaq and vital to the integrity of the Mi'kmaw Nation and should be cared for in accordance with their distinct culture, traditions, and language;
- b) The Mi'kmaq of Nova Scotia have their own worldview of protecting, caring, fostering well-being, and raising children so they thrive and are proud of who they are;
- c) Mi'kmaw children are loaned to the Mi'kmaq by the Creator, and their families must watch over them at all times while they are here;
- d) Mi'kmaw children are entitled to protection from harm;
- e) The rights of Mi'kmaw children are enjoyed either personally, or with their family;
- f) Mi'kmaw children, based on their age, maturity, understanding of their circumstances, willingness to participate, and when in their best interests, are entitled to be informed of their rights and freedoms, to be heard, listened to, respected, and participate in the decisions that impact them;
- g) Parent(s) or caregivers are entitled to be informed of their rights and freedoms, to be heard, listened to, respected, and participate in the decisions that impact them or their children;
- h) Parent(s) or caregivers have the responsibility for the care and well-being of their children, and children should only be removed from their parent(s) or caregiver, either partly or entirely, when all other measures were ineffective or are inappropriate under the circumstances; and
- i) Children have a sense of time that is different from that of adults, and decisions made during a child and family well-being matter must respect the child's sense of time.

THEREFORE, the Mi'kmaw Governing Body enacts the Customary Code as follows:

Maw-Kleyu'kik Kikmanaq Customary Code

2.0 TITLE

This Customary Code may be cited as Maw-Kleyu’kik Kikmanaq Customary Code, (date)

3.0 INTENT AND SPIRIT OF THE CUSTOMARY CODE

This section forms part of the Customary Code and is intended to provide an understanding of the Mi’kmaw intent and spirit of the clauses in the Customary Code, as follows:

- a) The Mi’kmaq of Nova Scotia have the right to reclaim, practice, and promote their inherent responsibility, obligation, and jurisdiction over Mi’kmaw children and families in Nova Scotia in relation to Mi’kmaw child and family well-being matters.
- b) Support the stability and integrity of the Mi’kmaw family to the fullest extent possible to ensure the needs of Mi’kmaw children are met.
- c) Support the healing and restoration of the Mi’kmaw family to promote healthy families.
- d) The agency role is to protect children from harm and support families when families need help to keep their children safe.
- e) Parents or caregivers that require help in caring for a Mi’kmaw child, should be provided support based on mutual respect to preserve the autonomy and integrity of the family unit whenever possible.
- f) Parents or caregivers involved in prevention and early help and family preservation matters concerning a Mi’kmaw child, should be made aware of their rights and be involved in the decisions that affect or impact them or their child.
- g) The least intrusive course of action that is available and is appropriate to help Mi’kmaw children and families, including the provision of prevention and early help and community support services, should be considered.

- h) Services and supports for a Mi'kmaw child should be provided in a manner that respects a child's need for continuity of care, stable relationships within a family, and their cultural environment, identity, and language.

4.0 DEFINITIONS AND INTERPRETATIONS

In this Customary Code, “shall” is mandatory and “may” is discretionary. The following terms shall have the following meanings ascribed to them in this Customary Code:

“active efforts” means a requirement by the [Agency] to proactively engage with and support the Mi'kmaw child, parent(s) or caregiver, or family in accessing services and supports to address any safety concern.

“[Agency]” means an administrative body established to protect Mi'kmaw children from harm and provide services and supports to Mi'kmaw children, families, and communities residing in Nova Scotia involved with child and family well-being matters;

“Band” means a Mi'kmaw First Nation in Nova Scotia recognized as a Band under the *Indian Act* (Canada);

“Band Council” means the Chief and Councillors of a Mi'kmaw First Nation within the province of Nova Scotia, as established under the *Indian Act* (Canada);

“Band Council Resolution” means a formal, documented decision made by a majority of a Council at a duly convened meeting of the Council of the Band;

“Band Designate” means an individual employed by a Mi'kmaw First Nation Band to assist with responding to Notices of Significant Measures and can bring the Band's perspective to the Wikimanej Kikmanaq Circle or Tribunal. Band Designates may also play an important advocacy role in child and family well-being matters involving Mi'kmaw children and families;

“Band member” means a person whose name appears on a Mi'kmaw First Nation Band membership list or who is entitled to have their name appear on a Mi'kmaw Band membership list, pursuant to the *Indian Act* (Canada) or the membership rules of a Band;

“**blended family**” in this Customary Code means Mi’kmaw families may include non-Mi’kmaq and culturally diverse members and their culture and traditions should be respected;

“**blended interracial family**” in this Customary Code means the coming together of parent(s) or the caregiver, one of whom is Mi’kmaq and the other from a different racial or ethnic background, and who bring a child or children from a previous relationship to form a new family unit;

“**bringing into care**” or “**bring in**” or “**bringing in**” under this Customary Code means a Mi’kmaw child who has been separated from the care of their parent(s) or caregiver and brought into the care of the agency but does not include a child who must be separated from their parent(s) or caregiver and is placed in customary care;

“**caregiver**” means a person, other than a Mi’kmaw child’s parent(s), who has a connection with the child and has accepted the day-to-day primary responsibility and care, and decision-making, for the child, and who is not mandated by the [Agency] to do so. Caregivers specifically exclude customary, kinship or foster carers arranged by the [Agency] in an ongoing Mi’kmaw child and family well-being matter;

“**carer**” means someone other than the Mi’kmaw child’s parent(s) or caregiver who provides the day-to-day care for the child as a result of the child being separated from their parent(s) or caregiver’s care by the agency, and who receive compensation from the Agency for caring for a Mi’kmaw child. Carers in this Customary Code include the following types:

“**customary carer**” means a person, who is not a Mi’kmaw child’s parent or caregiver, and

- a) who is often put forward by the child’s parent(s) or caregiver, and has agreed, and is approved by the [Agency] to care for a child on a temporary or extended basis; and
- b) who most often has a connection, relationship, or customary ties with the child, parent(s) or caregiver.

“**foster carer**” means a person, who is not a Mi’kmaw child’s parent or caregiver, and

- a) who is approved by the [Agency] to care for a child on a temporary or extended basis; and

- b) who does not generally have a connection, relationship, or customary ties with the child, parent(s) or caregiver.

“kinship carer” means a person, who is not a Mi’kmaw child’s parent or caregiver, and

- a) who is approved by the [Agency] to care for a child on a temporary or extended basis; and
- b) who has a connection, relationship, or customary ties with the child, parent(s) or caregiver.

“ceremony” means a community-based process that is grounded in culture, spirituality, and tradition;

“Children’s Advocate” means an independent professional employed by the Elder’s Lodge who provides advocacy and support to a Mi’kmaw child whose parent(s) or caregiver are involved with the [Agency];

“child in care” means a Mi’kmaw child who has been separated from their parent(s) or caregiver’s care and placed in kinship care, foster care, or in a placement facility approved by the agency;

“Community member” means,

- a) A Band member, whether residing on or off-reserve;
- b) A person on the Atlantic General List held by Indigenous Services Canada **who resides in Nova Scotia** and that shares a common ancestry, cultural history, and identity with the Mi’kmaq; and
- c) Such other persons accepted as Mi’kmaq through a process established by the Maw-lukutijik Saqmaq.

“consensus” in this Customary Code means the traditional Mi’kmaw practice of being given an opportunity to contribute to the resolution of a matter and each participant is willing to **respect (?accept)** the final decision of the group;

“customary adoption” refers to the Mi’kmaw practice of transferring the on-going primary responsibility of a Mi’kmaw child from birth parents or a caregiver to an adoptive parent(s) according to the customs of the Band accepting the child;

“**customary care**” means the care and supervision of a Mi’kmaq child by a person who is not the child’s birth parent or caregiver, according to Mi’kmaq traditional ways of caring for children.

“**Family violence**” in this Customary Code means a single occurrence or pattern of abusive behaviour used by someone to coerce, control, or harm a member of their family, or someone with whom they have an intimate relationship. ~~The abusive behaviour can include:~~

- a) Physical, sexual, emotional, mental, social, or financial abuse or neglect;
- b) Forms of humiliation;
- c) Harassment, including stalking;
- d) The killing or harming **of an animal** or the damaging of property;
- e) Forced confinement (excluding the use of reasonable force to protect themselves or another person or animal);
- f) Threats to harm themselves, another person, **an animal**, or cause property damage; or
- g) **Intentionally withhold the necessities of life**; (new wording)

such that it causes that family member to fear for their safety or for that of another person **or family pet**. In the case of a child, family violence may also include exposure of the child to such conduct in a way that negatively impacts them.

“**harm**” as it relates to a Mi’kmaq child who needs family preservation under this Customary Code, means any conduct, behaviour, or failure to act by a parent or caregiver or third party that results in serious or repeated physical or emotional harm, sexual abuse or exploitation, death of a child, or an imminent and significant vulnerability to these harms. These harms are described as follows:

“**Physical harm**” means **but is not limited** to:

- a) non-accidental injury or impairment to the child’s physical being;
- b) accidental injury or impairment to the child’s physical well-being as a result of a lack of appropriate supervision;
- c) **inappropriate** and harmful physical contact with a child;
- d) consumption of harmful substances by the child with encouragement of their parents or caregiver or as a result of a lack of appropriate supervision;
- e) deprivation of necessary medical treatment, without which would threaten the child’s life or physical well-being; or
- f) not providing the necessities for the child's physical health and wellbeing, such as adequate food, shelter, and clothing.

“Emotional harm” means but is not limited to a pattern of behaviour that damages a child’s sense of self-worth or negatively impacts their emotional development or attachment (which may be different or unique for a Mi’kmaw children), or creation of a hostile environment for a child that is severe or pervasive enough to substantially interfere with a child’s well-being. Emotional harm may also include not providing the necessities for the child’s emotional well-being, such as failure to provide adequate affection or supervision.

“Mental harm” means but is not limited to injury or impairment to a child’s mental well-being, growth, functioning, or development, either through the parent(s) or caregivers’ action or failure to act, such as exposure to traumatic events or deprivation of necessary mental health care without which would threaten the child’s mental well-being or their life. Mental harm may also include not providing necessities for the child’s mental well-being, such as failure to provide adequate access to education or age and developmentally appropriate psychological or cognitive development opportunities.

“Sexual harm and exploitation” means but is not limited to means any sexual activity with a child, such as sexual touching, oral-genital contact, intercourse, or non-contact sexual abuse of a child, such as exposing a child to sexual activity or pornography, observing or filming a child in a sexual manner, sexual harassment of a child, grooming a child, or prostitution of a child including any sex trafficking.

“Jordan’s Principle” means a program administered through the Government of Canada that provides funding for health, social, and educational needs for all First Nation children in Canada;

“least intrusive” means,

- a) The most appropriate, necessary, and reasonable level of service needed by a family to address prevention and early help issues, or the safety concerns of the child in a family preservation matter, which is provided in the least disruptive or invasive manner possible; and
- b) A child should not be removed from the care of their parent(s) or caregiver, unless other options have been tried, exhausted, or are inappropriate under the circumstances, and the child cannot be protected without bringing them into care.

“Malicious Reporting” means knowingly reporting false or misleading information, without reasonable belief of harm or potential harm to a child.

“Maw-lukutijik Saqmaq” or “Assembly of Nova Scotia Mi’kmaw Chiefs” means the aggregate governance institution for the Mi’kmaq in the province of Nova Scotia. The

Assembly is comprised of Nova Scotia Mi'kmaq Chiefs and ex-officio members which include the L'nu Saqmaq (Grand Chief) and Kji Keptin of the Grand Council, the Assembly of First Nations Regional Chief, and the District Chiefs of the Confederacy of Mainland Mi'kmaq and Union of Nova Scotia Mi'kmaq;

“Mi'kma'ki” means the traditional land of the Mi'kmaq, including, but not limited to present day Nova Scotia;

“Mi'kmaw child or Mi'kmaw children” in this Customary Code means a Nova Scotia Mi'kmaw person under the age of 19 years, and includes a child adopted in accordance with Mi'kmaw custom or the Mi'kmaw Customary Code, or a child adopted by one or more Mi'kmaq in accordance with the laws of a province;

“Mi'kmaw family” means a collective of family relations of a Mi'kmaw child including parents or a caregiver, siblings, grandparents, aunts, uncles, godparents, whoever the child, parent(s) or caregiver consider as family, and those recognized in accordance with Mi'kmaw customs;

“Mi'kmaw First Nation” means one of the thirteen (13) Mi'kmaw First Nation Bands in Nova Scotia;

“Mi'kmaw Governing Body” means a council, government or other entity that is authorized by the Assembly of Nova Scotia Mi'kmaw Chiefs to act on behalf of the Mi'kmaq of Nova Scotia as a First Nation group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;

“Missing and Murdered Indigenous Women and Girls Calls to Justice” is a report **providing** important ways to end the genocide and to transform systemic and societal values that have worked to maintain colonial violence. **Citation and link:** National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). *Reclaiming power and place. The final report of the national inquiry into missing and murdered indigenous women and girls.* The National Inquiry. https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf (accessed October 24, 2022);

“parent” in this Customary Code means,

- a) The birth parent-of a Mi'kmaw child;

- b) A person who, by Tribunal order, or Nova Scotia court order, or agreement with the parent(s), has decision-making authority or parenting time with the Mi'kmaw child;
- c) A person who has been recognized as the parent by custom of the Mi'kmaw community; or
- d) An Adoptive parent

but does not include customary, kinship or foster carers arranged by the [Agency] in an ongoing Mi'kmaw child and family well-being matter where a Mi'kmaw child has been separated from their parent(s) or caregiver, and does not include a birth parent when their child has been adopted;

“placement” means any of the following;

- a) A short- or long-term arrangement in which a Mi'kmaw child is placed in a home pursuant to the priority of placements at **clause XX** in the Customary Code while the parent(s) or caregiver receive services and supports to address the family preservation concerns;
- b) A short- or long-term arrangement in which a child is placed in a child caring facility if there is no priority of placement options available, or if it is in the best interests of a Mi'kmaw child; or
- c) The child remains in their home under any policy or protocol that allows for voluntary removal of the parent(s) or caregiver.

“Peace Officer” under this Customary Code, includes a member of the Royal Canadian Mounted Police, a police officer appointed by a municipality, a sheriff, a deputy sheriff, or a member of the military police of the Canadian Armed Forces;

“Regulations” means the regulations made under this Customary Code;

“Santé Mawiómi” or **“Mi'kmaw Grand Council”** means the Santé Mawiómi of the Mi'kmaq. The Grand Council is made up of Keptins from the seven districts in Mi'kma'ki, the Kji-Saqmaq (Grand Chief), Kji-Keptin and the Putus;

“Secure Care” refers to the placement of a Mi'kmaw child in the care of the [Agency] into a child caring facility with programs that can include protection, treatment, safety, security, and professional services that support the child's stabilization and well-being;

“service provider” means any person or entity that provides any service, including but not limited to prevention and early help and family preservation services, to a Mi’kmaw child or family under this Customary Code;

“severe domestic disharmony” includes in this Customary Code, a parent(s) or caregiver’s pattern of threats, humiliation and intimidation, or other negative behaviour towards the other, that the Mi’kmaw child has been exposed to and that impacts the child’s emotional functioning or development;

“significant measures” means any of the following:

- a) Bringing a Mi’kmaw child into care;
- b) Placement of a Mi’kmaw child or move outside of the home;
- c) Any care planning which involves a disruption in the care of a Mi’kmaw child involved in a family preservation matter;
- d) Tribunal application initiated pursuant to this Customary Code; or
- e) Adoption applications.

“social worker” means a professional, registered through the Nova Scotia College of Social Workers and hired under the Mi’kmaw child and family well-being [Agency] to provide services and programs to Mi’kmaw children, families, and communities;

“Tribunal” means a Mi’kmaw decision-making body developed by the Mi’kmaq to convene over Mi’kmaw child and family well-being matters;

“Truth and Reconciliation’s Calls to Action” is a report that provides 94 recommendations made by the Truth and Reconciliation Commission of Canada (TRC) to address the ongoing impact of residential schools on survivors and their families.

Citation and link: Canada, Truth and Reconciliation Commission of Canada. (2015); *Truth and Reconciliation Commission of Canada: Calls to Action* Catalogue no. IR4-8/2015E-PDF (Ottawa: Truth and Reconciliation Commission of Canada, 2015) Online https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf (accessed October 24, 2022);

“United Nations Declaration on the Rights of Indigenous Peoples” is a United Nation’s document that affirms the minimum standards for the survival, dignity, security and well-being of Indigenous peoples worldwide. **Citation and link:** UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*, available at: <https://www.refworld.org/docid/471355a82.html> (accessed October 24, 2022);

United Nations “Convention on the rights of the child” is an international agreement that sets out the civil, political, economic, social, and cultural rights of children. **Citation and link:** *Convention on the rights of the child* (1989) Treaty no. 27531. *United Nations Treaty Series*, 1577 (p. 3), Available at: <https://www.ohchr.org/sites/default/files/crc.pdf> (accessed: October 24, 2022);

“Wikimanej Kikmanaq Circle” means the process that facilitates Mi’kmaw family group circles, which is a collaborative process that empowers families making decisions regarding the care and well-being of their children; and

“young adult” in this Customary Code means a Mi’kmaw person between the ages of 19 and 26 years.

5.0 JURISDICTION

5.1 Jurisdiction

- a) The Mi’kmaq of Nova Scotia are part of the Mi’kmaw Nation whose ancestors have used and occupied Mi’kma’ki from time immemorial.
- b) The Creator gave the Mi’kmaq sovereignty to govern themselves. This Customary Code is an exercise of the Mi’kmaw sovereign right and jurisdiction to do so.
- c) The Mi’kmaq of Nova Scotia have an unextinguished and inherent and pre-existing right of self-governance which is recognized and affirmed by section 35 of the *Constitution Act, 1982*, and Aboriginal and Treaty rights, which includes the Mi’kmaq of Nova Scotia’s reclaiming jurisdiction in relation to Mi’kmaw child and family well-being services, including legislative authority over those services, and authority to administer and enforce this Customary Code made under that legislative authority.
- d) For greater certainty and for the purposes of section 4.2, the authority to administer and enforce this Customary Code includes the authority to provide for dispute resolution systems that incorporate Mi’kmaw laws, principles, and values.

5.2 Purpose

- a) The primary purposes of this Customary Code are:

“Confidential, privileged and under the protection of the February 23, 2007 Mi’kmaq-Nova Scotia-Canada Framework.”

- b) To protect Mi'kmaw children from harm;
- c) To promote the best interests, safety and well-being of Mi'kmaw children and their families;
- d) To promote healthy Mi'kmaw families and communities; To promote a Mi'kmaw child and family well-being system that reflects Mi'kmaw principles and values, community involvement, and wholistic support; and
- e) To promote the protection and sustainability of seven generations in the future.

5.3 Scope of Customary Code

- a) This Customary Code and the Mi'kmaw child and family well-being system shall apply to **all Nova Scotia** Mi'kmaw [Community members] and their **Nova Scotia** Mi'kmaw children, whether residing on or off reserve, **and as determined by section 10 and 11 of the *Indian Act***, or as determined by the Mi'kmaq of Nova Scotia.
- b) This Customary Code and the Mi'kmaw child and family well-being system **may** apply to all other persons who are in a conjugal partnership and blended family with a Mi'kmaw person **who would not otherwise apply to any of the** following that do not have that connection:
 - i. Non-Nova Scotia Mi'kmaw Members**
 - ii. Members of any other First Nations;
 - iii. Members of any Inuit community; and
 - iv. Members of any Métis community.
- c) The Scope of the Customary Code may be amended as Mi'kmaw Citizenship Codes are developed.

5.4 Human Rights and Freedoms Application

- a) Universal human rights belong to the Mi'kmaq of Nova Scotia who are entitled to fundamental freedoms on equal terms with others in society, without discrimination of any kind, including human rights linked specifically to identity,

rights to maintain and enjoy their culture, traditions, to be free from interference and discrimination, and rights to autonomy over Mi'kmaw child and family well-being matters.

b) The Mi'kmaq of Nova Scotia have an unextinguished right to self-determination, as affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*, which includes a right to govern itself, its members, and its lands;

c) **Sectoral Agreement Draft Wording to date:**

The Mi'kmaq Governing Authority and any entity authorized by the Mi'kmaq Governing Authority must comply with the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act* in respect of all matters within its jurisdiction and authority under this Customary Code.

6.0 CUSTOMARY CODE-MAKING, APPROVAL AND PUBLICATION

6.1 Customary Code-Making

The Mi'kmaq of Nova Scotia have chosen to make this Customary Code respecting the safety, well-being, care, and protection of Mi'kmaw children and their families.

6.2 Approval of Customary Code

Customary Code approval processes are established by the Mi'kmaq of Nova Scotia that require involvement, participation, and approval by the **members** of the Mi'kmaw First Nation communities in Nova Scotia in order for the Customary Code to be effective and enforceable.

6.3 Publication of Customary Code

This Customary Code concerning the Mi'kmaq of Nova Scotia will be made publicly available.

6.4 Conflict

If there is an inconsistency or conflict between a provision in this Customary Code or under its regulations and that of any other provincial or federal law or regulation,

including a by-law enacted under section 81 of the *Indian Act* (Canada), this Customary Code prevails to the extent of the inconsistency or conflict.

6.5 Stronger Ties

- a) When there is a conflict or inconsistency between a provision in the Customary Code and a provision in a law or Code of other Mi'kmaq or Indigenous groups, communities, or people, the provision that will apply is the one from the group, community, or people with which the Mi'kmaw child has stronger ties.
- b) Factors that must be considered include where the Mi'kmaw child resides, the Mi'kmaw child's views, preferences, age, and maturity, and the views of the parent(s) or caregiver.

6.6 Severability

If any provision of this Customary Code or its application to any person is held invalid or unenforceable, only that particular provision or part so found, shall be declared severable and not the entire Customary Code.

6.7 Interpretation

- a) The Customary Code defined herein is specific to the Mi'kmaq of Nova Scotia. It is not intended to apply to other processes, laws or codes developed by other First Nations or Indigenous groups within Canada.
- b) The principles set out in the Preamble and the Principles Governing the Customary Code shall be used to interpret this Customary Code.
- c) In this Customary Code:
 - i. The use of the word "shall" denotes an obligation that, unless this Customary Code provides to the contrary, it shall be carried out as soon as practicable after this Customary Code comes into effect or the event that gives rise to the obligation occurs;

- ii. Unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to”;
 - iii. Headings and subheadings are for convenience only, do not form a part of this Customary Code, and in no way define, limit, alter, or enlarge the scope or meaning of any provision in this Customary Code;
 - iv. A reference to a statute includes every amendment to it, every regulation made under it, and any Customary Code or law enacted in substitution for it or in replacement of it;
 - v. Unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular; and
 - vi. Unless it is otherwise clear from the context, the use of the term “they” or “them” includes all genders including female, male, two-spirit, non-binary, agender, and gender fluid.
- d) This Customary Code does not limit or preclude any right or remedy otherwise available to Mi'kmaw children, families or communities who are, or may be, affected by it.
 - e) This Customary Code does not limit or preclude the use of any method of alternative dispute resolution by Mi'kmaw children, families or communities involved in Mi'kmaw child and family well-being matters.
 - f) The structures, organization, and procedures established by or under this Customary Code shall be interpreted in accordance with the culture, traditions, and customs of the Mi'kmaq of Nova Scotia, unless otherwise provided.
 - g) The Mi'kmaw language should be used to clarify the meaning of any provision in this Customary Code.

6.8 Aboriginal and Treaty Rights Application and Recognition

- a) This Customary Code does not abrogate or derogate from any Aboriginal, Treaty, or inherent rights, or other rights or freedoms that pertain now or in the future to the Mi’kmaq of Nova Scotia.
- b) This Customary Code is consistent with all existing Aboriginal and Treaty rights of the Mi’kmaq of Nova Scotia.

6.9 Rights not Affected

This Customary Code does not alter:

- a) by-law powers of Band Councils pursuant to the *Indian Act* (Canada), provided they do not conflict with this Customary Code; or
- b) the Assembly Customary Codes or laws, community Customary Codes or laws, or any other Customary Codes or laws adopted by the Mi’kmaq of Nova Scotia, provided they do not conflict with this Customary Code.

6.10 Mi’kmaw Culture, Traditions and Language Principles

This Customary Code will be administered and interpreted in accordance with the following principles with regard to the culture, traditions, and language of the Mi’kmaq of Nova Scotia, unless otherwise provided:

- a) Decisions about a Mi’kmaw child must be consistent with culture, traditions, and language relevant to the child;
- b) Mi’kmaw culture, traditions and language are included within the concept of the best interests of a Mi’kmaw child;
- c) Mi’kmaw children do better when brought up with and involved in their culture, traditions, and language;
- d) The perspectives and understandings of Mi’kmaw Elders and Knowledge Holders in supporting healthy Mi’kmaw children and families is vital to stronger families and communities; and
- e) Consideration and respect for Mi’kmaw communities’ differences in culture and traditions is fundamental.

6.11 Administration and Authority of the (? MGB or Assembly)

- a) The Agency (name) shall be presided over by the (? MGB or Assembly) who has the supervision, direction, and control of all affairs and matters relating to the Mi'kmaw child and family well-being agency and system.
- b) The (? MGB or Assembly) has, unless specifically assigned to another ?? (in CFSA, **was Executive Council in provincial system**), the supervision, direction, and control of all affairs and matters relating to child and family well-being services, the administration of Acts, orders, and regulations.

6.12 Mi'kmaw Principles Governing the Customary Code

6.12.1 Basic Principle

Consistent with the *United Nations Convention on the Rights of the Child*, the *United Nations Committee on the Rights of the Child General Comment 11*, the *United Nations Declaration on the Rights of Indigenous Peoples*, the Truth and Reconciliation's Calls to Action, and the Missing and Murdered Indigenous Women and Girls Calls to Justice, the best interests of a Mi'kmaw child and well-being of Mi'kmaw children will be paramount. This is the foundation of this Customary Code, regulations, policies, and protocols developed by the Mi'kmaq of Nova Scotia regarding the care and well-being of their children and families.

6.12.2 Guiding Principles informed by Guiding Values

- a) Mi'kmaw children are our future, our Leaders, and the Carriers of our Nation.
- b) Mi'kmaq have their own worldview of protecting, caring, fostering well-being, and raising their children so they thrive and are proud of who they are.
- c) Mi'kmaw communities may have different customs and traditions, and each should be respected and followed.
- d) Mi'kmaw children should be happy, healthy, resilient, grounded in their culture and language, and thriving as individuals and as members of their families, community, and Nation.

- e) Mi'kmaw children require wholistic and traditional care that includes physical, spiritual, emotional, cognitional, and psychological safety, security, and support.
- f) Mi'kmaw children need to be loved, accepted, and supported and this is best achieved by being with family and remaining in their community.
- g) When a Mi'kmaw child must be removed from their parent(s) or caregiver, every effort must be made for continued contact and connection with their parent(s) or caregiver and family, as early as possible, and when in the best interests of the Mi'kmaw child.
- h) If a Mi'kmaw child is removed from their parent(s) or caregiver's care, the social worker removing the child must provide guidance to the parent(s) or caregiver on how to explain to the child in an age-appropriate manner, the circumstances of being brought into care.
- i) Mi'kmaw children need love, which is healing, and this love should be provided by their parent(s) or caregiver, family, and community. Removing Mi'kmaw children from their environment or their community can be traumatic to their care and well-being.
- j) Mi'kmaw children are entitled to rights, which include the right to be heard and express their wishes, have their views respected, and to live in their homes and community, whenever possible.
- k) Mi'kmaw children have family, Elders, Knowledge Holders, [Community members] and leadership, willing to help, who can be brought together to assist and support Mi'kmaw children and families in need.
- l) Mi'kmaw children and families have better outcomes when services and supports build on their strengths when they are provided in the spirit of respect and in a manner that recognizes their culture, traditions, connection to community, and the concept of family.
- m) The Mi'kmaw practice of Mi'kmaw customary adoption is integral to the care and well-being of Mi'kmaw children.

- n) Parent(s) or a caregiver may need help in caring for their Mi'kmaw children and that help should give support to the autonomy and integrity of the family unit and should be provided on the basis of mutual respect.
- o) Family and community can play a vital role in providing guidance and support to parent(s) or a caregiver.
- p) In all actions and decisions concerning a Mi'kmaw child, the parent(s) or caregiver should expect fair and due process, to be informed of their rights, to be notified in advance whenever possible of the potential of the [Agency] bringing their child into care and be able to participate in decision-making.
- q) The least intrusive course of action that is available and is appropriate in a particular case to help a Mi'kmaw child and family, including the provision of prevention and early help and community support services, should be considered.

6.13 Protection of Mi'kmaw Sacred Objects, Ceremonies, Practices, Days and Events

In carrying out Mi'kmaw child and family well-being services and supports involving a Mi'kmaw child, the [Agency] must take into account the following understandings in meeting the needs and best interests of a Mi'kmaw child, parent(s) or a caregiver:

- a) The culture and spiritual belief system of the Mi'kmaq is associated with sacred objects, ceremonies, and practices.
- b) These sacred objects, ceremonies, and practices must be protected and supported given their cultural importance and significance to the Mi'kmaw child, family, community, and Nation.
- c) Sacred objects, ceremonies, and practices must be honoured and treated with respect at all times and not interfered with.
- d) Significant days and events that have community or spiritual meaning to the Mi'kmaq shall be respected.

7.0 PRIORITY TO PREVENTION AND EARLY HELP

7.1 Principle

In the context of providing Mi'kmaw child and family well-being services to children and families, services that promote prevention and early help must be given paramount consideration and priority over other services and programming and must be consistent with the best interests of a Mi'kmaw child.

7.2 Coordination with Service Providers

The [Agency] will coordinate with other Mi'kmaw and non-Mi'kmaw service providers to ensure the following:

- a) The parent(s) or caregiver and family have choice regarding the services that serve to address their needs and the [Agency] concerns;
- b) There is no duplication of services; and
- c) Substantive equality principles are met.

7.3 Priority to Prenatal Care

The provision of voluntary prenatal services and supports consistent with what will be in the best interests of a Mi'kmaw child, shall be given priority over other services and support in order to prevent the child from being taken into care after birth.

7.4 Socio-economic Conditions

No Mi'kmaw child may be removed from their parent(s) or caregiver solely on the basis, or as a result of their socioeconomic conditions, unless it is in the best interest of the Mi'kmaw child and only if the agency has made all active efforts to find alternative solutions to the issue(s) but were not successful. Socioeconomic conditions include, but are not limited to poverty, lack of housing or infrastructure, or the state of health of the parent(s) or caregiver.

7.5 Active Efforts

- a) In the context of providing Mi'kmaw child and family well-being services in relation

to a Mi'kmaw child, unless immediate bringing into care is consistent with the best interests of the child, the social worker of the [Agency] must demonstrate that they made active efforts to have the child continue to reside with their parent(s) or caregiver.

- b) Active efforts in relation to having a child continue to reside with their parent(s) or caregiver, or a family member, means the social worker of the [Agency] must demonstrate through evidence:
 - i. Least Intrusive Care: How they have prioritized least intrusive measures so that the child remains with their parent(s) or caregiver while the parent(s) or caregiver receive services and supports to ensure the safety and well-being of the child; and
 - ii. Prenatal Care: How they have prioritized prenatal care over other services to prevent the bringing of the Mi'kmaw child into care at birth.

8.0 BEST INTERESTS OF A MI'KMAW CHILD

8.1 Principles

- a) This Customary Code is to be interpreted and administered in accordance with the principle of the best interests of a Mi'kmaw child.
- b) The best interests of a Mi'kmaw child are met when the child is strongly connected to their culture and community and live in a safe, healthy, and nurturing home.

8.2 Primary Considerations

- a) The best interests of a Mi'kmaw child must be a primary consideration in making decisions or taking actions in the context of the provision of Mi'kmaw child and family well-being services under this Customary Code.
- b) Primary consideration must be given to the Mi'kmaw child's physical, spiritual, emotional, cognitive, psychological safety, security, and well-being, as well as to the importance of the child having an ongoing relationship with their family and Mi'kmaw community and preserving the child's connection to their culture.

- c) The best interests of a Mi'kmaw child must be defined according to Mi'kmaw values and traditions and include:
- i. To have their preferences and wishes heard and taken into consideration when taking action or making decisions that impact them;
 - ii. To be informed of their circumstances and involved in planning and decision-making based on their age, maturity, understanding of their circumstances, and willingness to participate;
 - iii. To remain with family as the Mi'kmaw child's preferred environment and their parent(s) or caregiver having the primary responsibility to protect them;
 - iv. To remain connected to their Mi'kmaw culture, community, and language; and
 - v. To have access to services and programs that protect and promote a Mi'kmaw child's physical, emotional, and mental safety, security, and well-being.

8.3 Factors to be Considered

- a) To determine the best interests of a Mi'kmaw child, the following factors must be considered:
- i. Recognition that a Mi'kmaw child has inherent and legal rights that are distinct and separate from their parent(s) or caregiver;
 - ii. To be treated with respect and kindness;
 - iii. Access to the culture, traditions, and customary practices of their Mi'kmaw community;
 - iv. Access to the family and community to which the parent(s) or the caregiver and the Mi'kmaw child belong;
 - v. Access for the Mi'kmaw child to opportunities to use and learn their language, service providers who speak their language, use of an interpreter whether their first language is Mi'kmaq or not, and to understand their child and family well-being involvement in plain language;
 - vi. Access to safe and consistent environments that promote continuity for the Mi'kmaw child;
 - vii. Access to social workers and service providers who have a demonstrated understanding of Mi'kmaw culture, traditions, and practices;
 - viii. To have services and supports available to their parent(s) or caregiver that promote wholistic well-being; and

- ix. Recognition that the Mi'kmaw child's well-being exists within the context of their family.
- b) The factors above do not limit the matters that may be considered when determining what is in the best interests of a Mi'kmaw child.

8.4 Cultural Continuity

- a) Cultural continuity is essential to the well-being of a Mi'kmaw child, family, and community. Integral to cultural continuity is the transmission of the Mi'kmaw language, culture, practices, customs, traditions, ceremonies, and knowledge of Mi'kmaw people. A Mi'kmaw child's connection to their culture is an integral part of fostering their identity so that they grow up to be proud of who they are.
- b) This Customary Code is to be interpreted and administered in accordance with the principle of cultural continuity as reflected in the following concepts:
 - i. Cultural continuity is essential to the well-being of a Mi'kmaw child, family, and Mi'kmaw community;
 - ii. The transmission of Mi'kmaw language, culture, traditions, ceremonies, and knowledge is integral to cultural continuity;
 - iii. The well-being and best interests of a Mi'kmaw child are often promoted when the child resides with family and when the culture of the Mi'kmaw community to which the child belongs is respected;
 - iv. Mi'kmaw child and family well-being services and supports provided in relation to a Mi'kmaw child are to be provided in a manner that does not contribute to the assimilation of the child or the Mi'kmaw community to which the child belongs, or to the destruction of the culture of that Mi'kmaw community; and
 - v. The characteristics and challenges of the community or region in which a Mi'kmaw child, family or community is located are to be considered.

8.5 Substantive Equality

- a) Substantive equality in this Customary Code means addressing the inequities that stem from a Mi'kmaw child and family's particular circumstances to help put them at the same position as others to ensure substantive equality of outcomes for Mi'kmaw children.

- b) This Customary Code is to be interpreted and administered in accordance with the meaning of substantive equality and reflected in the following concepts:
- i. True equality in outcomes through equal access, equal opportunity, accommodation, and the provision of services and benefits that meet any unique needs and circumstances of a Mi'kmaw child and family, such as cultural, social, economic, and historical disadvantage;
 - ii. Implementation of measures that consider and are tailored to respond to the unique causes of historical disadvantage as well as geographical and cultural needs and circumstances;
 - iii. A jurisdictional dispute must not result in a denial of, or adverse differentiation in respect of a public service or product provided in relation to a Mi'kmaw child;
 - iv. A comparator group and comparative evidence are not necessary preconditions to determining instances where there is a need to pursue the objective of substantive equality;
 - v. The rights and distinct needs of a Mi'kmaw 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 Mi'kmaw community to which they belong.
 - vi. The Mi'kmaw child and the child's family members must be allowed to exercise their rights under this Customary Code, including to have their views and preferences considered in decisions that affect them, and to be able to do so without discrimination, including discrimination based on sex or gender identity, orientation, or expression; and
 - vii. The Mi'kmaw Governing Body acting on behalf of the Mi'kmaw community to which a Mi'kmaw child belongs must be able to exercise without discrimination the rights of the Mi'kmaw community under this Customary Code including the right to have the views and preferences of the Mi'kmaw community considered in decisions that affect the Mi'kmaw community.

9.0 COMMUNITY SUPPORT

9.1 Principle

- a) In Mi'kmaw communities, it is common that others within the community play significant and key roles in caring for and supporting the family, particularly in

times of need, and they need to be included in and relied upon to help the family through the difficult times.

- b) The varying contributions of community support providers must be considered in this Customary Code and the Mi'kmaw child and family well-being system when decisions affecting Mi'kmaw children and families are made.

9.2 Community Support Providers

- a) Community support providers may include, but are not limited to the following:

- i. Elders
- ii. Knowledge Holders
- iii. Family
- iv. [Community members]
- v. Community organizations
- vi. Santé Mawiómi (Mi'kmaw Grand Council)
- vii. Maw-lukutijik Saqmaq (Assembly of Nova Scotia Mi'kmaw Chiefs)
- viii. Chief and Council

- b) Families involved in Mi'kmaw child and family well-being matters must have the right to choose what support providers they wish to be involved with, and to what extent, as long as it addresses the Agency concerns and it is in the best interests of the Mi'kmaw child.

9.3 Contributions from Community Support Providers

This Customary Code acknowledges and supports the following contributions of community support providers for Mi'kmaw children and families:

- a) Support in the creation of a better future for Mi'kmaw children and families; a future where Mi'kmaw children are resilient, strongly connected to their culture and community and live in safe, healthy, and nurturing homes;
- b) Safeguarding and promoting the safety, well-being, and best interests of a Mi'kmaw child;
- c) Supporting sustainable families;

- d) Providing guidance and advice to families involved in Mi'kmaw child and family well-being matters;
- e) Teaching traditional customs and parenting practices including Mi'kmaw customary care and Mi'kmaw customary adoption;
- f) Supporting Mi'kmaw children to ensure they are looked after, cared for, loved, and taught their language, culture, and spiritual beliefs;
- g) Promoting healing and wellness in a manner that respects Mi'kmaw culture, traditions, and language; and
- h) Supporting Mi'kmaw children being looked after by Mi'kmaq in their communities.

9.4 Role of Band Designate

The Band Designate can play a significant role in the following:

- a) Assisting the Band in responding to Notices to Band;
- b) Ensuring Mi'kmaw children who are Band members, or eligible to be members of the Band, can exercise their right to their culture and community if they are involved in the Mi'kmaw child and family well-being system,
- c) Play an important advocacy role in Mi'kmaw child and family well-being matters to protect the collective best interests of Mi'kmaw children and their families;
- d) Act as a resource and a navigator for Mi'kmaw children and families;
- e) Ensuring Mi'kmaw children and families are included in planning for a Mi'kmaw child deemed in need of family preservation; and
- f) Advocate that Mi'kmaw children who are members of a Mi'kmaw Band shall be cared for by members of their family, community, or by another First Nation family who is willing to ensure that the child maintain their connection to their Mi'kmaw community, culture, and traditions.

10.0 DUTY TO REPORT

10.1 Duty to Report Harm to a Child

Every person who has information that a Mi’kmaw child, or any child, may experience or is experiencing harm will, without delay, report the matter to the [Agency].

10.2 Duty to Report Location of Mi’kmaw Child

Every person who received notice from an [Agency] that there is a reasonable concern and belief that a Mi’kmaw child, or any child, is in need of family preservation services shall upon obtaining information that would allow the child to be located, and whether the information obtained is confidential or not, without delay report the information to the [Agency].

10.3 Confidentiality and Privilege

The duty to report applies even where the information reported is confidential.

10.4 Civil Liability

No action will be commenced against a person for reporting information in accordance with the duty to report unless it is done maliciously.

10.5 Solicitor and Client Privilege

The duty to report does not apply to information that is privileged because of a solicitor-client relationship.

10.6 Consequence of Failure to Report

Every person who fails to report a Mi’kmaw child, or any child, in need of family preservation, may be subject to Mi’kmaw First Nation enforcement measures.

10.7 Penalty for Malicious Reporting

Malicious reporting can result in any of the following sanctions:

- a) First time: A letter from the [Agency] to stop making false claims, which will state the impact of malicious reporting on the child, family, and [Agency].
- b) Second time: Must attend a restorative justice circle through the Tribunal.
- c) Third time: Criminal harassment charges be laid under the Criminal Code.

11.0 [AGENCY] FUNCTIONS AND AUTHORITY

11.1 Principles

- a) The [Agency] in carrying out it's functions under its authority, do so in the spirit of respect and collaboration as they build a relationship with the Mi'kmaw families and communities they serve.
- b) Trauma-informed, strengths-based, and use of harm reduction and culturally safe practices better serve the provision of Mi'kmaw child and family well-being services in Mi'kmaw communities.

11.2 Functions of the [Agency]

The functions of the [Agency] are to:

- a) Protect Mi'kmaw children from harm;
- b) Advocate for, develop and deliver a culturally appropriate and safe Mi'kmaw child and family well-being services that respect and preserve the culture, traditions, and language of Mi'kmaw children and their families;
- c) Inquire into allegations or evidence that a Mi'kmaw child may be in need of family preservation services;
- d) Work collaboratively with other organizations and groups who may provide services and supports that the [Agency] does not, or with whom the parent(s) or caregiver or Mi'kmaw child choose to work with;
- e) Work collaboratively with community and other organizations and groups that

- work with or advocate for Mi'kmaw children and families, to prevent, alleviate, and remedy the personal, social, and economic conditions, and barriers that might or present harm and safety concerns for Mi'kmaw children and families;
- f) Take active efforts to make known to the Mi'kmaw communities the services the [Agency] provides;
 - g) Provide guidance, counselling, education, resources, and other services and supports to Mi'kmaw children and families as a prevention and early help measure;
 - h) Develop and provide services and supports for Mi'kmaw children and families to promote the integrity of families;
 - i) Supervise and provide care for Mi'kmaw children that the [Agency] is responsible for if a child is brought into care;
 - j) Assess service providers, facilities, or carers to work with or provide appropriate services and supports to Mi'kmaw children and families under this Customary Code;
 - k) Facilitate adoption services for the placement of Mi'kmaw children;
 - l) Support the language needs of Mi'kmaw children and families including provision of translators and interpreters; and
 - m) Perform any other duties given to the [Agency] under this Customary Code or its regulations.

11.3 Social Worker's Family Preservation Inquiry Authority

- a) When conducting a family preservation inquiry, a social worker, registered and employed by the [Agency], may,
 - i. Attend at the residence of the Mi'kmaw child and any other place frequented by the child;
 - ii. Interview and examine the Mi'kmaw child;
 - iii. Interview any parent or caregiver of the Mi'kmaw child;
 - iv. Interview any person who cares for or has an opportunity to observe the Mi'kmaw child;

- v. Interview any person who provides cultural, health, social, educational, or other professional services and supports to the Mi'kmaw child, parent(s), or caregiver;
 - vi. Interview other persons about past parenting when appropriate to do so; and
 - vii. Interview police, and any collateral contacts put forward by parent(s) or the caregiver; and
 - viii. Gather any evidence that the social worker considers necessary or advisable to complete the inquiry.
- b) A social worker employed by the [Agency] may exercise the authority enumerated in section (a) regardless of whether the social worker has the consent of parent(s) or the caregiver of the Mi'kmaw child but must:
- i. Respect for the Mi'kmaw community and its members in which they are involved;
 - ii. Provide for the protection and confidentiality of personal information they receive; and
 - iii. Protect the confidentiality of those reporting, as prescribed by this Customary Code.

11.4 Orders for Production

Upon the application of the [Agency] prior to commencing a family preservation matter, or upon the application of the [Agency] or a party to an ongoing Wikimanej Kikmanaq Circle or Tribunal proceeding, where the Tribunal is satisfied that,

- a) there are reasonable concerns to believe that a person or organization has possession, custody, or control of records or documents containing information necessary for the [Agency] to determine whether a Mi'kmaw child is in need of family preservation services, and that person or organization has refused or is unwilling to permit the production and inspection of those records or documents; or
- b) the information sought is relevant and may help resolve the Wikimanej Kikmanaq Circle or Tribunal proceeding,

the Tribunal may grant an order directing the following:

That a person or organization shall produce a copy of the records or documents to the [Agency] social worker who shall make them available to the person or organization to whom the records or documents pertain, and all parties if a Wikimanej Kikmanaq Circle or Tribunal proceeding has been commenced.

11.5 Order for Access or Entry

- a) Where there is an emergency situation considered dangerous or life-threatening to a Mi'kmaw child or another person, and the social worker of the [Agency] has been refused access to the child or entry to premises where the child resides or is located, the social worker may enlist the services of a Police Officer to access the child or enter the premises to determine if the child is in need of family preservation services.
- b) Where there is a non-emergency situation that could result in a Mi'kmaw child being brought into care, and the social worker of the [Agency] has been refused access to the child or entry to premises where the child resides or is located, the [Agency] may apply to the Tribunal for an order to:
 - i. enter specified premises;
 - ii. conduct an observational examination or limited physical examination of the Mi'kmaw child;
 - iii. remove the Mi'kmaw child and attend with the child for a medical examination;
 - iv. observe specified premises and document anything that supports that there are reasonable concerns to believe that a Mi'kmaw child is in need of family preservation services; or
 - v. interview the Mi'kmaw child,

to determine whether the Mi'kmaw child and parent(s) or caregiver need family preservation services. The Tribunal may grant an order authorizing a social worker of the [Agency] to do anything referred to in clause (b) where the Tribunal is satisfied that there are reasonable concerns to believe that the child may need family preservation services.

- c) A hearing in respect of an application made pursuant to this section can be held in private without notice to all parties except that the Tribunal may permit any person to be present if the Tribunal considers it appropriate.

11.6 Police Officer Involvement

- a) A Police Officer will only be involved in the social worker’s performance of their duties if their presence is specifically requested to keep the peace if there is a safety issue or concern.
- b) Whenever possible, when requesting the involvement of a Police Officer, the social worker shall first request a Mi’kmaw Police Officer be involved, and if a Mi’kmaw Police Officer is not available, request an Indigenous Police Officer, and if an Indigenous Police Officer is not available, request a racialized Police Officer, and if racialized Policer Officer is not available, request a non-racialized Police Officer.

11.7 Detention of Mi’kmaw Child by Police Officer

- a) If a Police Officer in their duties becomes aware of a potential family preservation concern involving a Mi’kmaw child in a non-emergency situation, whether the child is in care or not, they must contact the [Agency] and follow the instructions of the social worker.
- b) In an emergency situation, where a Police Officer has reasonable concerns to believe that:
 - i. A Mi’kmaw child is under the age of sixteen years and is in need of family preservation services;
 - ii. A Mi’kmaw child is in the care of the [Agency], and is under the age of 19 years, and is in need of family preservation services; or
 - iii. A Mi’kmaw child is under the age of 12 years and has committed a serious offence for which the child cannot be charged under the *Youth Criminal Justice Act* or any subsequent youth criminal legislation,

the Police Officer may detain the child and shall immediately take such reasonable steps as are necessary to,

- i. Notify the [Agency] and the Mi’kmaw child’s parent(s) or caregiver of the detention; and
- ii. At the direction of the social worker of the [Agency],

- (1) Deliver the Mi'kmaw child to the social worker of the [Agency];
 - (2) Return the Mi'kmaw child to the child's parent(s) or caregiver; or
 - (3) Deliver the Mi'kmaw child to the child's placement.
- c) In an emergency situation, where there is a Mi'kmaw child between the ages of 16 and 19 years who is not in care but may be in need, or is in need of family preservation services, the Police Officer, rather than detain the child, must notify the [Agency] who may offer services or placement to the child to address the safety concerns.
- d) Where a Mi'kmaw child is delivered to a social worker of the [Agency], the social worker shall immediately return the child to the child's parent(s) or caregiver or, bring the child into care as permitted by and in accordance with this Customary Code.
- e) Police Officers authorized by the Canada Border Services Agency may also be required to detain children who enter or leave the country as unaccompanied or without immigration status documentation. This would be required when there is reasonable concern that there are circumstances impacting the safety, security, and well-being of a Mi'kmaw child such that they are in need of family preservation.

11.8 Abandonment of a Mi'kmaw Child Principle

Even when parents or a caregiver can no longer care for their Mi'kmaw child, it is not because they do not love their child but rather that they are not in a position to adequately care for their child at that point in their life.

11.9 Abandonment Of Mi'kmaw Child

- a) Abandonment of a Mi'kmaw child can occur when the parent(s) or caregiver of the child is not available to exercise care for the child and they have not made adequate provision for the child's care.
- b) If it appears to the [Agency] that the Mi'kmaw child has been abandoned, the social worker may develop a safety plan for the child for a period not to exceed seventy-two hours during which time the [Agency] shall make all active efforts to locate or contact the child's parent(s) or caregiver, unless that parent(s) or caregiver has died.

- c) Where a parent(s) or caregiver is located or contacted, the [Agency] shall immediately,
 - i. Return the Mi’kmaw child to the parent(s) or caregiver’s care; or
 - ii. At the request of the parent (s) or caregiver, place the Mi’kmaw child with another person with the consent of that other person; or
 - iii. Bring the Mi’kmaw child into care as permitted by and in accordance with this Customary Code.
- d) Where a Mi’kmaw child has been brought into care under this Customary Code and the child is returned within 72 hours to their parent(s) or caregiver, a social worker will end the [Agency] involvement if there are no family preservation concerns unless the parent(s) or caregiver wishes to participate in voluntary services.
- e) Where the [Agency] is unable within seventy-two hours to locate or contact a parent(s) or caregiver, the [Agency] may make application to the Tribunal to place the Mi’kmaw child pursuant to the priority of placements as per **section XX** .

11.10 Voluntary Relinquishment

- a) Voluntary Relinquishment of a Mi’kmaw child can occur when the parent or caregiver of the child voluntarily chooses to give up all parental rights of their child and are seeking [Agency] support to make adequate provision for the child’s care.
- b) Where a parent(s) or caregiver has voluntarily relinquished parental rights of a Mi’kmaw child, the [Agency] shall bring the child into care as permitted by and in accordance with this Customary Code.

11.12 Death of Parent(s) or Caregiver

Upon the death of a Mi’kmaw child’s parent(s) or caregiver, the [Agency] shall bring the child into care as permitted by and in accordance with this Customary Code if the parent(s) or caregiver did not make adequate provision for the child’s care prior to their death.

11.13 Death of Mi'kmaw Child

When a Mi'kmaw child who is involved with the [Agency] becomes deceased, the Agency shall forthwith:

- a) Notify the Parents or Caregiver;
- b) Notify the Mi'kmaw Governing Body and the [Agency] Board of Directors;
- c) Notify the local Police Service and Provincial Medical Examiner;
- d) Notify the investigator at the Elders Lodge to conduct an inquiry into the circumstances of the child's death and file a report with the parent(s) or caregiver, the Mi'kmaw Governing Body, and the [Agency] Board of Directors.
- e) Speak to the parent(s) or caregiver regarding consent to an autopsy of the body of the child if required, unless the Medical Examiner has already decided to do one; and
- f) In consultation with the family, arrange for the burial or other disposition of the body of the child.

11.14 Mi'kmaw Child Withdrawing or Missing from Care

- a) Upon the application of the parent(s), caregiver, or the [Agency], having the care of a Mi'kmaw child, where the Tribunal is satisfied that,
 - i. The Mi'kmaw child has withdrawn or is missing from the care of the parent(s) or caregiver or the [Agency], as the case may be, without their consent; and
 - ii. the parent(s) or caregiver or the [Agency], as the case may be, has reasonable concerns to believe that the Mi'kmaw child's health or safety may be in danger;
 - iii. the Tribunal may issue an order authorizing a Police Officer to locate and detain the child and, upon detaining the child, the Police Officer shall, as soon as is practicable,
 - iv. return the Mi'kmaw child to the parent or caregiver or the [Agency] named in the order;
 - v. deliver the Mi'kmaw child to a social worker; or

- vi. deliver the Mi'kmaw child to a placement provider as directed by a social worker.
- b) Where a Mi'kmaw child is delivered to a social worker, the social worker may either return the child to the child's parent(s) or caregiver if it is in the best interests of the child or bring the child into care.
- c) A hearing in respect of an application made pursuant to this section shall be held in private without notice to all parties except that the Tribunal may permit any person to be present if the Tribunal considers it appropriate.
- d) The initial order arising from the application authorizing a Police Officer to locate and detain the Mi'kmaw child shall remain in effect up to and including 72 hours of issuance where:
 - i. the Mi'kmaw child who has been detained by a Police Officer and is returned and withdraws or goes missing again without permission of the parent(s) or caregiver or the [Agency], respectively, within 72 hours of being returned; and
 - ii. the social worker determines there continues to be a concern of harm or potential harm to the Mi'kmaw child.

12.0 SERVICES AND SUPPORTS

12.1 Principle

Parent(s) or the caregiver sometimes require services and supports to address the needs of their children and family either prior to, during, or after Mi'kmaw child and family well-being involvement. The family and the [Agency] will need to work together to ensure the safety, protection, stability and well-being of Mi'kmaw children and families.

12.2 Voluntary Support Services for Mi'kmaw Child and Family

- a) Considering the historical and intergenerational trauma experienced by the Mi'kmaq of Nova Scotia, voluntary services that support a Mi'kmaw child, parent(s) or caregiver need to be culturally appropriate, culturally relevant, and culturally safe in order for better understandings and wholistic healing.

- b) The [Agency] shall ensure that all services and supports provided to the Mi'kmaw child, parent(s) or caregiver, whether within the Mi'kmaw communities or from organizations or service providers outside of the Mi'kmaw communities, must,
 - i. Be strengths-based and include harm reduction approaches;
 - ii. Take into account the Mi'kmaw child's parent(s)' or caregiver's needs, including respect for their physical, spiritual, emotional, cognitional, or psychological health, safety, security, and well-being;
 - iii. Utilize community-based services whenever possible;
 - iv. Promote substantive equality; and
 - v. Be accountable to ensure the services and supports are meeting the desired needs.

12.3 Services and Supports to Promote the Integrity of Family

- a) Where it appears to the [Agency] that services and supports are necessary to promote the principle of using the least intrusive means to enable a Mi'kmaw child to remain with their parent(s) or caregiver or be returned to or placed in the care of a parent or caregiver, the [Agency] shall make active efforts to provide services and supports or connect families and children to services and supports that promote the integrity of the family.
- b) Parent(s) or caregivers involved in Mi'kmaw child and family well-being matters must be given the choice of what service and support providers they wish to be involved with, and to what extent, as long as it addresses the agency's concerns and is in the best interests of the Mi'kmaw child.
- c) Services and supports to promote the integrity of the family include, but are not limited, to services provided by the [Agency], or provided by others with the assistance of the [Agency], for the following purposes:
 - i. Prevention and Early Help
 - ii. Family Preservation
- d) The voluntary services and supports to assist the Mi'kmaw child, parent(s) or caregiver may include:
 - i. Elders' cultural support, teachings, and guidance;
 - ii. Professional counselling;

- iii. In-home support;
 - iv. Respite care;
 - v. Parenting programs, including Mi'kmaw traditional parenting;
 - vi. Services for improving the family's financial situation;
 - vii. Services for improving the family's housing;
 - viii. Drug or alcohol treatment and rehabilitation;
 - ix. Mediation of disputes;
 - x. Services to assist the family to deal with the illness of a person or a family member; and
 - xi. Any other services agreed to by the [Agency] in the care of a Mi'kmaw child.
- e) The delivery of Mi'kmaw child and family well-being services and supports shall prioritize prenatal family support with the birthing parent's agreement to prevent newborns from being brought into care.

12.4 Services and Supports for Carers

- a) Where it appears to the [Agency] that services and supports are necessary to promote the stability of the placement of a Mi'kmaw child in kinship care, customary care, foster care, or adoption, the [Agency] shall make active efforts to provide services and supports to carers that promote the integrity of the placement.
- b) Services and supports may include:
- i. Financial
 - ii. Mentorship
 - iii. Community and Cultural Connection
 - iv. Child Safety Necessities

12.5 Duty to Provide Services and Supports to a Mi'kmaw Child

- a) The [Agency] shall provide to a Mi'kmaw child appropriate services and supports or placement if it appears to the [Agency] that,
- i. the child is a child in care who requires services and supports, or placement; or
 - ii. the child is under the age of 16 years and not in care but is in need

- of family preservation services; or
- iii. the child is between the ages of 16 and 19 years, who is not in care but is in need of family preservation services, and consents to the provision of services and supports or placement.
- b) When a Mi'kmaw young adult is over the age of nineteen years and continues to be in care, and the [Agency] continues to believe that the young adult requires age-appropriate services or supports, or a placement, the [Agency] shall, with the consent of the young adult, determine and provide the appropriate services, supports, or placement.
- c) A services and/or placement agreement made pursuant to sections a) (iii) and (b) above shall be made for a period not exceeding one year but may be extended for further periods each not exceeding one year up to the age of 26 years, with the approval of the [Agency] or a decision of the Tribunal if the matter is contested.

12.6 Voluntary Placement Agreement

- a) The [Agency] shall provide to a Mi'kmaw child between the ages of 16 but under 19 years, who is not in care, with a voluntary placement service if specifically requested by the child or family, and with consent of the child, if the child,
 - i. Does not reside with a parent or caregiver;
 - ii. Is or may be in need of family preservation services and supports;
 - iii. The parent(s) or caregiver requires respite for the child; or
 - iv. The parent(s) or caregiver requires assistance with arranging a placement for the child.
- b) The [Agency] may not enter into a voluntary placement agreement under this section, unless the [Agency] determines that,
 - i. an appropriate placement that is likely to benefit the child is available; and
 - ii. a placement is not otherwise available to the child from any source.
- c) A voluntary placement agreement under this section shall be made for a period not exceeding one year but may be extended for further periods each not exceeding one year, with the approval of the [Agency], or the Tribunal.

- d) The [Agency] where practicable, in order to ensure the Mi'kmaw child's best interests are served, shall take into account:
- i. regular contact between the child and their parent(s) or caregiver, siblings, relatives and friends;
 - ii. the desirability of keeping siblings together in the same family unit;
 - iii. the preservation of the child's community, culture, identity, traditions, language, and spirituality; and
 - iv. the continuity of the child's education.

12.7 Effect of Services for Mi'kmaw Child

Mi'kmaw child and family well-being services provided in relation to a Mi'kmaw child are to be provided in a manner that:

- a) takes into account the child's culture, traditions, language, and community;
- b) takes into account the child's needs, including with respect to the child's safety, security, and well-being;
- c) ensures the child will know their family origins;
- d) promotes substantive equality between the child and other children; and
- e) ensures the child's right to live free of maltreatment that would jeopardize the child's safety, security, and well-being.

12.8 [Agency] Services, Supports and Program Collaboration

- a) The [Agency] shall collaborate with Mi'kmaw organizations and service providers in the Mi'kmaw communities that offer resources, services, supports and programs to address prevention and early help or family preservation concerns.
- b) The [Agency] shall also collaborate with organizations and service providers outside of the Mi'kmaw communities that offer resources, services, supports, and programs that can address prevention and early help or family preservation concerns that are not available in the Mi'kmaw communities.

- c) The parent(s) or caregiver or family may chose to work with the resources, services, supports, and programs the [Agency] offers or those offered in community by Mi'kmaw organizations and service providers to address the prevention and early help or family preservation matters.
- d) The [Agency] shall not, without the consent of the parent(s) or caregiver, interfere with ongoing prevention and early help support or planning for the parent(s) or caregiver if the resources, services, supports ,or programs are already accessed through a community organization.
- e) If the parents or a caregiver are involved in a family preservation matter, reports from service providers may be required if the parent(s) or caregiver choses a community resource, service, support, or program offered outside of those the [Agency] provides.

12.9 Voluntary Services and Programs for Parent(s) or Caregiver

- a) To support and assist the parent(s) or caregiver in the care of the Mi'kmaw child, the [Agency] may:
 - i. Provide to the parent(s) or caregiver with voluntary services and programs;
 - ii. Assist others in providing services or programs; or
 - iii. Assist the parent(s) or caregiver in obtaining services and programs.
- b) A self-referral to the [Agency] by parents or a caregiver requesting or accessing voluntary services and programs will be acknowledged as a positive effort in any Mi'kmaw child and family well-being matter or legal proceeding involving the Mi'kmaw child for whom support is sought.

12.10 Term of Service

Provision of services and programs by the [Agency] must not initially exceed three months, with the understanding that the services can be extended for longer periods of time as defined by need.

12.11 Mi'kmaw Family Healing Centres

12.11.1 Principle

Mi'kmaw children, families, and communities have the right to culturally safe and appropriate holistic programming that supports healthy family relationships and lifestyles.

12.12 Mi'kmaw Family Healing Centre Services

The [Agency] can provide children, families, and communities with individual and group services and support through self-referral or [Agency] involvement, for any of the following provided through the Mi'kmaw Family Healing Centre Services:

- a) Protection, safety, shelter, and basic life necessities to families in crisis;
- b) Crisis support telephone line;
- c) Services, supports, and information to children and families to enable them to develop and maintain healthy family relationships and lifestyles;
- d) Outreach and Education services to Mi'kmaw children, families, and communities on healthy relationship skills, life skills, and family violence intervention, healing, and prevention;
- e) Referral and follow-up to other social services programs; and
- f) Any other service or support that meets the needs and addresses systemic barriers and structural factors impacting Mi'kmaw children, families, and communities.

12.13 Facilities and Programs

Principle

Mi'kmaw child and family well-being facilities and programs are designed to maintain the integrity of Mi'kmaw families, and to ensure that the extended removal of a Mi'kmaw child from the care of their parent(s) or caregiver is a last resort.

12.14 Development, Operation, and Maintenance of Facilities and Programs

- a) The Customary Code provides for the development, operation, and maintenance of facilities and programs providing services and supports related to Mi'kmaw child and family well-being, including the care of Mi'kmaw children, parenting skills teachings for parent(s) or caregivers, and counselling and treatment for Mi'kmaw children and parent(s) or caregivers.
- b) **The Mi'kmaw Governing Body (may be or is ?) responsible for authorizing the development of facilities and programs in relation to Mi'kmaw child and family well-being services and supports, and for regulating their operation and maintenance, in accordance with community standards and any regulations made under this Customary Code.**
- c) Facilities and programs, upon authorization of the Mi'kmaw Governing Body, may be developed, operated, and maintained by the Agency or by third-party organizations.
- d) Nothing in this Customary Code prevents the Mi'kmaw use of, or participation in, municipal, provincial, federal, or publicly or privately funded facilities, programs, resources, or support services, where agreements have been reached with the appropriate authority.

13.0 ENTRY PATHWAYS

13.1 Entry Pathways

Both the Wikimanej Kikmanaq Circle and the Tribunal will have the role and authority to address Mi'kmaw child and family well-being matters under this Customary Code.

13.2 Wikimanej Kikmanaq Circle

13.2.1 Principle

For many Mi'kmaq, the circle is a powerful symbol of connectivity and completeness. It is linked historically to community approaches to resolving conflict, repairing harm, and

restoring relationships. The circle concept is inherent in the cultural fabric of the Mi'kmaq and is reflective of Mi'kmaw traditional practices of *wikamou*, community consensus in decision-making; *Wi'kupaltimk*, a ceremony of reconciliation, and *mawi apoqnamatimk*, the shared responsibility of family and the community in coming together to help and support one another.

13.3 Wikimanej Kikmanaq Circle Role and Authority

- a) The Wikimanej Kikmanaq Circle may become involved on any issue brought forward by the [Agency] or the parent(s) or caregiver, children, and carers, in matters concerning prevention and early help, family preservation and placement, adoption which can include adoption breakdown, and any other matter if it is in the best interests of a Mi'kmaw child to do so.
- b) The Wikimanej Kikmanaq Circle may be utilized to explore adoption options, formalize an adoption or customary adoption, when a Mi'kmaw child is transitioning from placement to adoption, and support an existing adoptive placement.
- c) In the context of family preservation matters, this voluntary process is meant to serve as an initial pathway where the parent(s) or caregiver agree to work with the [Agency] as an alternative to going through the Tribunal process.
- d) The Wikimanej Kikmanaq Circle may continue to have some involvement if the Tribunal determines that certain aspects of the family preservation matter are better addressed through a Wikimanej Kikmanaq Circle.

13.4 Wikimanej Kikmanaq Circle Process

- a) The Wikimanej Kikmanaq Circle is a voluntary traditional Mi'kmaw circle process and the least intrusive entry pathway under this Customary Code.
- b) There is no time limitation on addressing voluntary Prevention and Early Help issues through the Wikimanej Kikmanaq Circle.
- e) The Wikimanej Kikmanaq Circle shall comply with timeline limitations set out in **section X** for addressing family preservation safety concerns unless those timelines are extended by agreement of the parties in the Wikimanej Kikmanaq Circle or modified or extended by Tribunal decision.

13.5 Agreements and Orders involving the Wikimanej Kikmanaq Circle

- a) The Wikimanej Kikmanaq Circle may require a signed agreement with the [Agency] or an order from the Tribunal to address the care and placement of a Mi'kmaw child in a family preservation matter while the parent(s) or caregiver continue to work through the Wikimanej Kikmanaq Circle.
- b) The [Agency] has an obligation to first seek a signed agreement with the parent(s) or caregiver through a collaborative process prior to seeking an order of the Tribunal.
- c) Any signed agreement by the parties participating in the Wikimanej Kikmanaq Circle shall have the force and effect of an order arising from the Tribunal.

13.6 Tribunal

13.6.1 Principle

A Mi'kmaw hearing process created by and for the Mi'kmaq, can better address the special and unique needs and circumstances of Mi'kmaw children and families involved in child and family well-being matters. Such an alternative approach to provincial court systems provides a traditional, cultural, and wholistic space to resolve child and family well-being issues.

13.7 Tribunal Role and Authority

- a) The Tribunal is the most intrusive entry pathway for a family preservation matter and must only be used in situations where the Mi'kmaw child's safety and well-being cannot be safeguarded through planning through the Wikimanej Kikmanaq Circle.
- b) The [Agency] may make an application to the Tribunal when the family is unable or unwilling to engage in services and supports through the Wikimanej Kikmanaq Circle or is not making sufficient progress to reduce or resolve the safety concerns regarding the Mi'kmaw child.

- c) The Tribunal may hear and decide on any issue brought forward by the [Agency] or the parent(s) or caregiver in a family preservation matter if it is in the best interests of a Mi'kmaw child to do so.
- d) The Tribunal may hear and decide on any other issue brought forward by the [Agency] or the parent(s) or caregiver it deems appropriate but does not have the authority to decide on any prevention and early help matter.
- e) The Wikimanej Kikmanaq Circle may continue to have some involvement if the Tribunal determines that certain aspects of the family preservation matter are better addressed through a Wikimanej Kikmanaq Circle.

13.8 Tribunal Family Preservation Orders

Under this Customary Code, the Tribunal has the authority to order any of the following as it applies to family preservation matters that are before the Tribunal:

- a) A Supervision order where the Mi'kmaw child continues to live in the care of the parent(s) or caregiver, and the child is not in the care of the [Agency];
- b) A Customary Care order where a Mi'kmaw child lives in the care of family or community connections, according to Mi'kmaw traditional ways of caring for children, and with the consent of the carer and the consent of the parent(s) or caregiver whenever possible.
- c) A Temporary Care order where the Mi'kmaw child involved in a family preservation matter is in the temporary care of the [Agency];
- d) An Extended Care order where the Mi'kmaw child involved in a family preservation matter is in the extended care of the [Agency] up to the age of 19 years;
- e) The Tribunal may make an order for contact and connection between the Mi'kmaw child and their family that is consistent with the safety and well-being and in the best interest of a Mi'kmaw child, and such order can include when the child is in Extended care.
- f) The Tribunal shall not make an order in a family preservation matter that is working through the Wikimanej Kikmanaq Circle process, unless an order is required when agreement cannot be reached.

- g) Parent(s) or the caregiver of a child that was placed in Extended care of the Agency, may make application to the Tribunal seeking return of the child to their care no earlier than six (6) months post-Extended care, unless with leave of the Tribunal.

13.9 Refusal to Consent to Medical Treatment

- a) Where a Mi'kmaw child is in the care of their parent(s) or caregiver who refuses to consent to the provision of proper medical or other recognized remedial care or treatment that is considered essential by two duly qualified medical practitioners for the preservation of life, limb or vital organs of a child, and the Agency is notified of the matter, the Agency shall apply to the Tribunal right away for a hearing.
- b) Where an application is made pursuant to (a) above, the Tribunal shall hear the matter as soon as possible upon such notice to the parent(s) or caregiver as is practical.
- c) The parties to the proceeding are the Agency, the parent(s) or caregiver, and such other persons as the Tribunal may order.
- d) Upon hearing the matter, the Tribunal may make an order,
 - i. Dismissing the matter;
 - ii. Authorizing the provision of proper medical or other recognized remedial care or treatment that is considered essential by a duly qualified medical practitioner for the preservation of life, limb or vital organs or the prevention of unnecessary suffering of the child;
 - iii. Prohibiting the parent(s) or caregiver or any other person from obstructing the provision of the care or treatment ordered;
 - iv. Requiring the parent(s) or caregiver to deliver the child to the place where the care or treatment will be provided;
 - v. Including any other terms, including the duration of the Order, that the Tribunal considers necessary.
- e) The Tribunal may confirm, vary, rescind or terminate an Order made pursuant to subsection (d) upon the application of a party.

13.10 Other Tribunal Orders

The Tribunal has the authority under this Customary Code to make any order deemed necessary to protect the Mi'kmaw child from harm and when in the best interests of a Mi'kmaw child.

13.11 Duration of Orders

- a) The duration of a Supervision order, a Customary Care order, or a Temporary Care order of the Tribunal must not exceed three months before it returns to the Tribunal for review.
- b) Where the Tribunal has made a Supervision order, the total period of the order shall not exceed eighteen months unless an extension of the Supervision order is agreed to by the parties or granted by the Tribunal
- c) Where the Tribunal has made a Customary Care order or a Temporary care order, the total period of orders shall not exceed,
 - i. where the Mi'kmaw child was under fourteen years of age at the time of the application commencing the proceedings, twenty-six months; or
 - ii. where the Mi'kmaw child was fourteen years or more at the time of the application commencing the proceedings, thirty months;

unless an extension of the Customary Care order or Temporary care order is agreed to by the parties or granted by the Tribunal.

- d) Where a family preservation matter is before the Tribunal and the parties are referred by the Tribunal to the Wikimanej Kikmanaq Circle, the time spent in the Wikimanej Kikmanaq Circle will be counted against the maximum timeline duration in the proceeding.

13.12 Extension of Agreements or Orders

- a) If all parties agree to an extension of the maximum timeline duration of a Wikimanej Kikmanaq Circle agreement, Supervision order, Customary Care order, or a Temporary Care order of the Tribunal, the extension of the agreement or order shall be granted.

- b) If the parties do not agree to an extension of the maximum timeline duration, the Tribunal shall have the authority to hear and decide the matter based on the best interests of a Mi'kmaw child.

13.13 Continuation of Extended Care Order Beyond Age 19 Years

- a) An Extended Care order may be extended beyond the age of 19 years and up to the age of 26 years by either:
 - i. mutual agreement between the young adult and the [Agency]; or
 - ii. Tribunal order when the young adult and the [Agency] cannot reach mutual agreement to an extension and the Tribunal determines extension of the order would be in the best interests of the young adult.

13.14 Multiple proceedings

Multiple or successive proceedings shall not have the effect of amending the maximum timeline duration of the orders set out in this Customary Code.

13.15 Judicial Review

(Being developed)

13.16 Appeals

All appeals from any proceeding or hearing under this Customary Code shall be heard pursuant to the provisions of this Customary Code or any established appeal procedures except to the extent that any rule of **procedure** is in direct conflict with the expressed provisions of this Customary Code. In such a case, the provisions of this Customary Code shall apply and take precedence.

13.17 Elders Lodge

The Elders Lodge is an authority responsible for any of the following in relation to a Mi'kmaw child and family involved with the [Agency]:

- a) To provide advocacy and accountability in the care and treatment of Mi'kmaw children and families;
- b) To investigate and make determinations of allegations concerning the care and treatment of Mi'kmaw children and families;
- c) To investigate the death of a Mi'kmaw child involved with the [Agency];
- d) To hear appeals from carers or service providers involved with the [Agency]; and
- e) Provide dispute resolution process.

14.0 NOTICE PROVISIONS

14.1 Notice of Significant Measures

- a) Insofar as it is consistent with the best interests of the Mi'kmaw child, and it is safe to do so, the [Agency] must make active efforts to provide Notice of Significant Measures to the child's parent(s) or caregiver within five (5) days before any significant measure in relation to the child is taken, whether the matter proceeds through the Wikimanej Kikmanaq Circle or the Tribunal.
- b) The [Agency] must ensure that the Notice of Significant Measures provided in section (a) does not contain personal information about the Mi'kmaw child, parent(s) or caregiver, or a member of the child's family, other than information that is necessary to explain the proposed significant measure as defined in this Customary Code.
- c) The [Agency] must provide supporting documentation along with the Notice of Significant Measures to any person identified to have party status unless there is a significant concern that doing so would cause harm to another party or would not be in the best interests of the Mi'kmaw child;
- d) A party to the proceeding to whom the [Agency] did not provide the supporting documentation when the Notice of Significant Measures was served, may make application to the Tribunal to have the supporting documentation released to them.
- e) The Mi'kmaw Governing Body of the community to which the child belongs, or is

eligible to belong, and to the Mi'kmaw Governing Body to where the child resides, is entitled to the same Notice of Significant Measures as a party but without the supporting documentation, which Notice may be served upon the Mi'kmaw community's Band Designate if requested by the Chief who,

- i. may have a Band Designate present at any hearing;
- ii. may be represented by legal counsel; and
- iii. may make submissions to the Tribunal;

but shall take no further part in the hearing without leave of the Tribunal.

- f) Notice of Significant Measures shall also be provided to any added third party to a family preservation proceeding.
- g) Provision of a Notice of Significant Measures at any stage of a family preservation proceeding should not be provided to those whose sole connection to the child is by way of an [Agency] family preservation placement.
- h) The [Agency] shall provide the Tribunal documentation of how and when the Notice of Significant Measures was provided, as well as documentation if providing such Notice was not safe or possible.

14.2 Parties to Proceeding

- a) Parties to a family preservation proceeding shall include:
 - i. the [Agency];
 - ii. the child's parent(s) or caregiver;
 - iii. the Mi'kmaw child, where the child is twelve years of age or more, unless the Tribunal otherwise orders; and
 - iv. a third party added at any stage in the proceeding pursuant to an order of the Tribunal.
- b) Where the identity or whereabouts of either the parent(s) or caregiver is unknown to the [Agency], the Tribunal shall inquire of each party to the proceeding to attempt to
 - i. ascertain the identity or whereabouts of the parent(s) or caregiver.
 - ii. Where more than one person is identified as a possible parent or caregiver, each such person shall be served with notice.

14.3 Mi'kmaw Child as Party and Representation

- a) A Mi'kmaw child who is twelve years of age or more is a party to a proceeding unless the Tribunal otherwise orders and is entitled to retain legal counsel for the purposes of the proceeding unless they are not able to instruct legal counsel.
- b) Where a Mi'kmaw child who is twelve years of age or more and has been made a party to the proceeding, but is not able to instruct legal counsel, the Tribunal shall appoint a Children's Advocate for the child.
- c) Where a Mi'kmaw child who is under twelve years of age but has demonstrated maturity and wishes their views and preferences to be known to the Tribunal, and upon request by the child at any stage of the proceeding, the Tribunal may order that the child be made a party to the proceeding.
- d) Where the Tribunal determines that such status is desirable to protect the Mi'kmaw child's best interests and orders that a child under twelve years of age be made a party to the proceeding, the Tribunal shall appoint a Children's Advocate for the child.
- e) The Children's Advocate in collaboration with the child's social worker, will determine what, if any disclosure is appropriate for the child to receive if they are a party to the proceeding.

15.0 FAMILY PRESERVATION

15.1 Principles Governing Family Preservation Support by the [Agency]

This Customary Code will be administered and interpreted in accordance with the following principles:

- a) When a Mi'kmaw child is determined to be in need of family preservation under this Customary Code, it requires a recognition that differing Mi'kmaw communities' traditions, culture, and language must be respected and in accordance with community standards when bringing a child into care.

- b) Family preservation services and supports, including bringing a child into care, will be provided only in circumstances where there is no other reasonable way to safeguard and promote the Mi'kmaw child's safety and well-being.

15.2 Mi'kmaw Child who Needs Family Preservation

A Mi'kmaw child needs family preservation involvement where:

- a) the child has suffered or is vulnerable to suffering serious or repeated physical or emotional harm inflicted by the child's parent(s) or caregiver or caused by the parents' or caregiver's unwillingness or inability to care and provide for, or supervise and protect the child adequately;
- b) the child has not been provided with adequate necessities of life being shelter, food, clothing, medical care, mental health care, dental care, or education, and if not immediately remedied, could seriously impair the child's growth or development, or result in permanent injury or death;
- c) the child has been or is vulnerable to being sexually abused or sexually exploited by the child's parent(s) or caregiver or by another person where the child's parent(s) or caregiver knew or should have known of the possibility of sexual abuse or sexual exploitation and was unwilling or unable to protect the child;
- d) the child is susceptible to harm or exploitation due to life circumstances such as underage, homelessness, mental illness (including addiction), or physical or intellectual disability;
- e) the child has demonstrated severe
 - i. mental health issues,
 - ii. self-destructive behaviour
 - iii. aggressive behaviour towards others,

and the child's parent(s) or caregiver are unwilling or unable to make adequate provision for the child's care, or to consent to the provision of services, treatment, or healing processes to remedy or alleviate the harm;

- f) the child’s physical, or emotional, health, safety, security, and well-being has been harmed, or is significantly vulnerable to being harmed, where the parents’ or caregiver’s mental or emotional health creates a safety concern to the child and they have not made adequate provision for the child’s care;
- g) the child’s physical or emotional health, safety, security, and well-being has been harmed or is significantly vulnerable to being harmed by the child’s problematic use of alcohol, drugs, solvents or similar substances and the child’s parent(s) or caregiver are unwilling or unable to adequately and safely care for the child or consent to the provision of services, treatment, or healing processes to remedy or alleviate the harm;
- h) the child has been exposed to intimate partner violence, family violence, or severe domestic disharmony and the parent(s) or caregiver fail or refuse to obtain services or treatment, or to take other measures, to remedy or alleviate the intimate partner violence, family violence, or severe domestic disharmony;
- i) the child has been left alone by the parent(s) or caregiver who are unwilling to provide care for the child and who have not made adequate provision for the child’s care;
- j) the child is left alone on the death of their parent(s) or caregiver, or the child’s family has not made adequate provision for the child’s care;
- k) The child is under 12 years of age and,
 - i. has killed or seriously injured another person; or
 - ii. caused significant damage to the property of others,

and services, treatment, or healing processes are necessary to prevent a recurrence, and the child’s parent(s) or caregiver are unwilling or unable to consent to the provision of the services, treatment, or healing processes to remedy or alleviate the harm; and

- l) The child is under 12 years of age and has on more than one occasion,
 - i. injured another person; or
 - ii. caused loss or damage to another person’s property,

with the encouragement of the parent(s) or caregiver, or a person that the parents(s) or caregiver should have known would encourage such behaviour, or because of the parent(s) or caregiver’s failure or inability to supervise the child adequately.

15.3 Method of Bringing into Care

A social worker who is authorized to bring a Mi’kmaw child into care under this Customary Code may, without warrant or notice, bring the child into care but only if the child is significantly vulnerable to harm, there is no other reasonable way to safeguard and promote the child’s safety and well-being, and the situation requires immediate or urgent bringing into care to protect the child.

15.4 Action following Bringing into Care of the Mi’kmaw Child

Where, under this Customary Code, a social worker brings a Mi’kmaw child into care, the [Agency] shall have the temporary care of the child. The social worker shall also,

- a) Continue to inquire and review the child’s need for family preservation;
- b) Develop a plan to support the child and parent(s) or caregiver, which shall include making arrangements for contact and connection between the child and the parent(s) or caregiver as soon as possible;
- c) Offer voluntary services and supports to the parent(s) or caregiver;
- d) Support the parent(s) or caregiver to take necessary steps to ensure the best interests of their child are met;
- e) Make every effort with the parent(s) or caregiver of the child to reunify the family, whenever possible, or arrange customary care.
- f) If the child cannot remain in the care of the parent(s) or caregiver, and the child cannot be placed in customary care, the social worker will make every effort with the parent(s) or caregiver and family of the child to arrange kinship care.

16.0 PLACEMENT OF A MI’KMAW CHILD

16.1 Mi'kmaw Child Placement Principles

This Customary Code will be administered and interpreted in accordance with the following principles with regard to the placement of a Mi'kmaw child when they are unable to live with their parent(s) or caregiver:

- a) Mi'kmaw children need to be looked after by Mi'kmaq in their communities, where they are familiar with their people and their surroundings.
- b) When a Mi'kmaw child is no longer able to live with their parent(s) or caregiver, the child, and the parent(s) or caregiver can be involved in the decision as to where the child will be placed.
- c) Grandparents, Godparents, and other family members, can have a significant role in caring for a Mi'kmaw child when the child's parent(s) or caregiver are unable to; and
- d) Significant others of a Mi'kmaw child can be considered relatives or family and can play a role in caring for a child when the child's parent(s) or caregiver are unable to.

16.2 Priority of Placement

Consistent with the safety and best interests of a Mi'kmaw child, consideration of placement options shall occur in the following order of priority:

- a) with one of the child's parent(s) or caregiver;
- b) with another adult member of the child's family;
- c) with an adult who belongs to the same Mi'kmaw community as the child;
- d) with an adult who belongs to a Mi'kmaw community other than the one to which the child belongs;
- e) with an adult who belongs to an Indigenous community and to whom the child has a connection; or
- f) with another adult.

16.3 Voluntary Removal of Parent(s) or Caregiver from Home

- a) When the [Agency] has deemed a Mi'kmaw child to have been harmed or is significantly vulnerable to harm and needs to be brought into care, rather than removing the child from their home, the [Agency] shall discuss with the parent(s) or caregiver the option for them to voluntarily leave the family home rather than removing the child in order to create the least amount of disruption in the child's life.
- b) The parent(s) or caregiver's consent will be required to leave the Mi'kmaw child in the family home with an appropriate carer while the parent(s) or caregiver receive the necessary services and supports that support reunification with the child.

16.4 Placement With or Near Siblings or Other Children

When the order of priority set out under **section X** (Priority of Placement) is being applied, the placing a Mi'kmaw child with siblings, or children who are otherwise members of the child's family, must be considered as a priority in the determination of whether a placement would be consistent with the best interests of a Mi'kmaw child.

16.5 Customs and Traditions in Placement

The placement of a Mi'kmaw child under **section X** (Priority of Placement) must take into account the customs and traditions of Mi'kmaw peoples and their communities such as Mi'kmaw customary care and Mi'kmaw customary adoption.

16.6 Family Unity and Reunification of Mi'kmaw Children in Care

- a) In the context of a Mi'kmaw child who has been temporarily removed from the care of their parent(s) or caregiver, there must be ongoing reassessments, at a minimum of every 30 days, of whether it would be in the best interests of the child to be placed with:
 - i. the child's parent(s) or caregiver; or
 - ii. with another adult member of the child's family;

if the child does not already reside with either.

- b) In the context of a Mi'kmaw child who has been removed from the care of their parent(s) or caregiver and placed under an Extended care order or agreement, there must be ongoing reassessments, at a minimum of every six months, or earlier, of whether it would be in the best interests of the Mi'kmaw child to be returned to, or placed with:
 - i. the child's parent(s) or caregiver; or
 - ii. another adult member of the child's family.

16.7 Attachment and Emotional Ties

In the context of a Mi'kmaw child who has been removed from the care of their parent(s) or caregiver, the child's attachment and emotional ties to their parent(s) or caregiver and other family members must be promoted, to the extent that doing so is consistent with the best interests of the Mi'kmaw child.

16.8 Temporary Care and Extended Care Placements

The [Agency] having the Temporary care or Extended care of a Mi'kmaw child may determine the appropriate placement for the child considering any of the following:

- a) Customary Care
- b) Kinship Care
- c) Foster Care
- d) Place of Safety
- e) Group Home Care
- f) Special Needs Care
- g) Secure Care
- h) Voluntary Placement Agreement 19-26 years of age

16.9 Transitioning to Independence

16.9.1 Principle

Mi'kmaw children and young adults in care require supports and services to become self-sufficient and confident as they transition from care to successful independence. This is best achieved by engaging them in planning for their future and providing the supports

and services they need to develop the skills, community connections, and support networks that will best achieve positive outcomes.

16.10 Transitioning to Independence of Mi'kmaw Child or Young Adult

- a) Mi'kmaw children up to the age of 19 years have the right to stay in care unless they are able to be reunified with their parent(s) or caregiver.
- b) Mi'kmaw young adults in care at the age of 19 years, may choose to stay in care up to the age of 26 unless they wish to terminate their Extended care and transition to independence, or with mutual agreement of the [Agency].
- c) A Mi'kmaw child or young adult remaining in the care of the [Agency] and transitioning to independence may access or continue to access placement, services and supports through the [Agency] to assist with their successful transition to independence.
- d) The [Agency] must work with the Mi'kmaw child beginning at age 14 years to develop a transition plan that assists the Mi'kmaw child with building strong connections, supportive services, and independent living skills that promote their successful transition to independence.
- e) A reintegration ceremony may be provided to a Mi'kmaw child or young adult transitioning to independence, with their consent, to support a reconnection to their family, community, and Nation.
- f) If a Mi'kmaw child or young adult who was previously in the Extended care of the [Agency] transitioned to independence and the transition was not successful, they may seek further [Agency] placement, services, and supports up to the age of 26 years.
- g) A Mi'kmaw child or young adult who was previously in the Extended care of the [Agency] and their in-care status was terminated, may seek further [Agency] placement, services, and supports up to the age of 26 years, if their transition was not successful.

17.0 CUSTOMARY CARE

17.1 Principles

- a) A customary care placement is a least intrusive measure where a Mi'kmaw child may be placed in the care and supervision of a person, other than the parent(s) or caregiver.
- b) The care and safety of a Mi'kmaw child is a collective responsibility that extends beyond the family to the Mi'kmaw community as a whole.
- c) A customary care placement must ensure the safety of the Mi'kmaw child, the needs of the child, the continuity of family relationships and contact, and preserve the child's connection to culture, traditions, language, and identity.

17.2 Customary Care Placement

- a) A customary care placement may be used when a Mi'kmaw child is removed from the care of their parent(s) or caregiver by the [Agency] as a result of family preservation involvement, and with the consent and collaboration of the parent(s) or caregiver, whenever possible, the [Agency] will make active efforts to arrange a customary care placement.
- b) The customary carer must consent to the customary care placement.
- c) The [Agency] should consider consent of the child to the placement, dependent on their age and maturity.
- d) In arranging a customary care placement, the [Agency] must consider the priority of placement at **section X** set out in this Customary Code.
- e) In customary care placements, the customary carer would be the legal guardian of the child.
- f) In customary care placements, the agency continues to be responsible for contact and connection decisions between the child and the parent(s) or caregiver.
- g) A customary care placement may be used for assisting a Mi'kmaw young adult in care to transition to independence provided the young adult consents to the placement.

17.3 Minor Parent

In family preservation matters, where a Mi'kmaw child is to be removed from the care of a minor parent and there is consideration of a customary care placement, the following apply:

- a) A minor parent between the ages of 16 and 19 years of age, must have their consent considered to place their child in a customary care placement.
- b) If the minor parent is under the age of 16 years, their own parent(s) or caregiver must have their consent considered to place the child in a customary care placement.
- c) The [Agency] should consider the consent of the minor parent under the age of 16 years to the customary care placement of their child, dependent on their age and maturity, unless that consent cannot be ascertained.

17.4 Continued Application of the Customary Code in Customary Care

The fact that a Mi'kmaw child is receiving services and supports under a Customary Care Agreement does not prevent,

- a) The child or the child's family from receiving services and supports;
- b) The [Agency] from being authorized to remove the child from the home and bring the child into care; or
- c) A Tribunal from finding the child to be in need of family preservation.

18.0 SECURE CARE

18.1 Principle

There may be times when a Mi'kmaw child is suffering from an emotional or behavioural disorder or they need to be protected from significantly dangerous or harmful situations (such as human trafficking), and require placement in specialized, safe, and secure care

to protect them or treat them. Placing a child in such an environment should only be considered if there are no other options available to address the matter.

18.2 Tribunal Secure Care Certificate

- a) Upon the request of the Agency, the Secure Care team at the Secure Care facility may issue a Secure Care Certificate for a period of no longer than 5 (five) days, in respect of a Mi'kmaw child if the Secure Care team has a reasonable belief that the child is suffering with an emotional or behavioural disorder that requires them to be protected by placing them in specialized, safe, and secure care.
- b) Where the child who is the subject of an application for a Secure Care Certificate is not a child in the Extended Care of the Agency, the Agency shall notify the child's parent(s) or caregiver of the Agency's request for a Secure Care Certificate prior to the request being made to the Secure Care team at the Secure Care facility.
- c) The Secure Care Certificate issued by the Secure Care team at the Secure Care facility shall include the reason for the child's confinement, the duration of the Certificate and the date, the place and time of the hearing on the matter, a statement that the child may be represented by legal counsel at any hearing, including the address and telephone number of the nearest legal-aid office.
- d) The Secure Care Certificate shall be served on the child who is the subject of the Certificate and on the nearest legal-aid office, not more than one day after it is issued.
- e) Where a Secure Care Certificate has been issued, the Agency shall appear before the Tribunal before the Certificate expires and advise the Tribunal if they are seeking a Secure Care Order.

18.3 Secure Care Order

- a) The Agency may make an application to the Tribunal for a Secure Care Order in respect of a Mi'kmaw child in the care of the Agency.
- b) The Secure Care application shall be served on the child and upon the nearest legal-aid office to the child.

- c) Where the child who is the subject of an application is not in the Extended Care of the Agency, the Agency shall provide notice to the child’s parent(s) or caregiver of the proceeding, and the Tribunal may, upon application by a parent(s) or caregiver of the child, add the parent(s) or caregiver as a party to the proceeding.
- d) After a hearing on the matter, the Tribunal may make a Secure Care Order in respect of the child, for a period of time not more than 45 days if the Tribunal is satisfied that:
 - i. the child is suffering from an emotional or behavioural disorder; or
 - ii. the child needs to be protected from significantly dangerous or harmful situations; and
 - iii. it is necessary to place the child in a secure care facility to remedy or alleviate the disorder or protect the child from significantly dangerous or harmful situations; and
 - iv. there is an appropriate plan of treatment for the child.
- e) Upon the application of the Agency, and after a Tribunal hearing before the expiry of a Secure Care Order, the Order may be renewed in respect of the child, for a period of not more than ninety (90) days in the case of a first or subsequent renewal, if the Tribunal is satisfied that:
 - i. the child suffers from an emotional or behavioural disorder; or
 - ii. the child needs to be protected from significantly dangerous or harmful situations; and
 - iii. it continues to be necessary to place the child in a secure care facility to remedy or alleviate the emotional or harmful disorder or protect the child from significantly dangerous or harmful situations; and
 - iv. there is an appropriate plan of treatment for the child.

18.4 Tribunal Review of Secure Care Order

- a) An application to the Tribunal to review a Secure Care Order may be made by the Agency, the Mi’kmaq child who is the subject of the Order, or a parent or caregiver of the child, if the parent or caregiver was a party to the application of the Order.

- b) Every party to an application for a Secure Care Order is a party to an application for review.
- c) Where the child who is the subject of an application for review is not in Extended Care, the applicant shall notify the child’s parent(s) or caregiver of the proceeding if the parent(s) or caregiver is not already a party to the application for review.
- d) Where the child who is the subject of an application for review is not a child in Extended Care, the Tribunal may, upon application by a parent(s) or caregiver of the child, add the parent(s) or caregiver as a party to the proceeding.
- e) An application for review may be made at any time by the Agency.
- f) An application for review by any party other than the Agency shall only be made once during the period of a Secure Care Order, except with leave of the Tribunal.
- g) An application for review must be filed and served no fewer than five (5) days before the hearing.
- h) After hearing an application for review and after considering whether,
 - i. the child is suffering from an emotional or behavioural disorder; or
 - ii. the child needs to be protected from significantly dangerous or harmful situations; and
 - iii. it is necessary to place the child in a secure care facility to remedy or alleviate the disorder or protect the child from significantly dangerous or harmful situations; and
 - iv. there is an appropriate plan of treatment for the child.

the Tribunal may make an Order confirming, varying or terminating the Secure Care Order, but in no case shall the period of the Order be extended.

18.5 Duty of Tribunal and Appeal

- a) Upon making, renewing or reviewing a Secure Care Order, the Tribunal shall give reasons for its decision and shall inform the Mi’kmaw child and the parent(s) or caregiver, if the parent(s) or caregiver was a party to the application respecting the Order, of the review, renewal and appeal provisions pursuant to sections 17.3 and 17.4.

- b) An Order pursuant to sections 17.3 and 17.4 may be appealed in accordance with **section X** (CFSA s. 49 on Appeal and Stay) by the Agency, the child or the parent(s) or caregiver, if the parent(s) or caregiver was a party to the application for the Order.

18.6 Effect of Secure Care (Certificate and) Order

- a) A Secure Care Certificate or Order is sufficient authority for a Police Officer, or a representative or person designated by the Agency, to apprehend and convey the Mi'kmaw child named in the Certificate or Order to a secure care facility and to detain the child while being conveyed to a secure care facility.
- b) Upon a Secure Care Certificate or Order being issued, the person in charge of a secure care facility shall admit the child to the facility, if the child is not already a resident in the facility and shall be responsible for ensuring that the child is provided with the diagnostic and treatment services in accordance with the terms of the Certificate or Order and the needs of the child.
- c) Where the child who is the subject of a Secure Care Certificate or Order leaves a secure care facility when leave of absence has not been granted or fails to return to a facility in accordance with the terms of a leave of absence, a Police Officer, or a representative or person designated by the Agency may apprehend the child and return the child to the secure care facility.

18.7 Leave of Absence or Transfer from Secure Care Facility

- a) During the period of a Secure Care Certificate or Order, the person in charge of the secure care facility may grant the Mi'kmaw child a leave of absence from the facility to attend legal proceedings or for medical, humanitarian, or rehabilitative reasons on any terms or conditions that the person in charge considers necessary.
- b) Where the child named in the Secure Care Certificate or Order is in a secure care facility, the child may, with the approval of the Agency, be transferred to another secure care facility and subsection (a) of Section 17.6 applies while the child is being transferred.

18.8 Authority of Secure Care Certificate or Order

- a) Where a Mi'kmaw child named in a Secure Care Certificate or Order is required to appear at a Tribunal or court in the Province of Nova Scotia, the Secure Care Certificate or Order is sufficient authority for a Police Officer, upon the request of the Agency, to convey the child to and from the Tribunal or court and to detain the child while conveying the child.
- b) Where a leave of absence is granted to a child named in a Secure Care Certificate or Order, and the leave of absence includes a condition that the child remain under the custody and control of a Police Officer for the duration of the leave of absence, the Secure Care Certificate or Order is sufficient authority for a Police Officer, upon the request of the Agency, to convey the child to and from any place in the Province and to detain the child while conveying the child.

19.0 MI'KMAW ADOPTIONS

19.1 Mi'kmaw Customary Adoption Protocol: Ankweiwanej Knijannaq

The Mi'kmaw Customary Adoption Protocol: Ankweiwanej Knijannaq, recognizes and applies the following principles and values as found in the seven directions of the *Kloqowej*:

- a) The Mi'kmaw child's wishes will be considered along with the child's needs in placement decisions. The best interests of a Mi'kmaw child will be in all decision-making.
- b) The contact between the adopted Mi'kmaw child, the birth parents and birth siblings will be decided in the best interests of the Mi'kmaw child.
- c) Mi'kmaw customary adoption placements shall take into consideration the child's family and place of residence, including the desire to preserve the child's heritage, sense of belonging, culture, and language.
- d) The adopting family may invite the recognized birth family of the Mi'kmaw child to attend the customary adoption, and to maintain a connection with and honour the adopting family of the child.
- e) Community based ceremonies may be engaged and supported for the recognition and formalization of the customary adoption, when appropriate.

- f) All decisions relating to a customary adoption shall be made through consensus.
- g) The birth parents of a Mi'kmaw child can retrieve primary responsibility of the adopted child if all parties agree upon it, and it is in the best interests of a Mi'kmaw child to do so.

19.2 Mi'kmaw Customary Adoption Recognition

- a) In recognition of Mi'kmaw customs, practices, and traditions, the Mi'kmaw Customary Adoption: Ankweiwanej Knijannaq Protocol offers services to facilitate customary adoptions for Mi'kmaw children and families in Nova Scotia.
- b) On application, the Tribunal may declare that there has been an adoption of a person in accordance with the customs of a Band.
- c) The Tribunal may declare that as a result of the customary adoption,
 - i. the person adopted is the Mi'kmaw child of the adoptive parents; and
 - ii. the adoptive parents are the legal parents of the person adopted.
- d) Each Mi'kmaw community's adoption customs are recognized and affirmed by this Customary Code.
- e) Mi'kmaw adoption customs relied on in this Customary Code will prevail over the customary adoption laws or codes or processes of any other government or Indigenous Governing Body.

19.3 Customary Adoption Requirements

- f) The adoption of a Mi'kmaw child under the Mi'kmaw Customary Adoption: Ankweiwanej Knijannaq Protocol, requires the following minimum requirements:
 - i. The customary adoption is being entered into voluntarily by all parties;
 - ii. The Band accepting the Mi'kmaw child has a recognized custom for transferring the primary care of the person to another person;
 - iii. Two Elders from the Mi'kmaw community, one of which must be from the community in which the child resides, and who are not related to the Mi'kmaw person being adopted or the potential adopting parents, can

- verify the Mi'kmaw person was adopted according to a recognized custom of the Mi'kmaw Band;
- iv. At least one of the adopting parents is entitled to benefit from the custom of the Band; and
 - v. The Band whose custom is being relied upon supports the customary adoption of the Mi'kmaw child through a Band Council Resolution that must fully satisfy the established quorum of the Band Council.

19.4 Mi'kmaw Customary Adoption Support

- a) If a customary adoption requires financial support to preserve the placement, the [Agency] may provide a subsidy for as long as is needed.
- b) If a Mi'kmaw customary adoption takes place and later experiences a breakdown, the [Agency] may support the family with services or financial support without having to open a family preservation case unless there are family preservation concerns that require the [Agency] to do so.
- c) The Wikimanej Kikmanaq Circle may be utilized to explore adoption options, formalize an adoption or customary adoption, when a Mi'kmaw child is transitioning from placement to adoption, and support an existing adoptive placement.

19.5 Mi'kmaw Non-Customary Adoption

(Working on this)

19.6 Mi'kmaw Inter-Provincial Adoption

(Working on this) 19.7 International Adoption of a Mi'kmaw Child

(working on this)

20.0 CHILD ABUSE REGISTER

20.1 Harm Defined for Child Abuse Register

In sections 19.6(b) to 19.6 to 19.XX of this Child Abuse Register section, “harm” of a Mi’kmaw child means that the Mi’kmaw child,

- a) Has suffered physical harm, inflicted by the person or caused by the person’s failure to supervise and protect the child adequately;
- b) Has been sexually harmed by the person or by another person where the person, having the care of the child, knows or should know of the possibility of sexual harm and fails to protect the child; or
- c) Has suffered serious emotional harm caused by the intentional conduct of the person.

20.2 Child Abuse Register

- a) The MGA? on behalf of the Agency shall rely on the Province of Nova Scotia’s Child Abuse Register when there is need to check that system or a need to enter a person’s name on the Register, when in the best interest of a Mi’kmaw child to do so.
- b) The MGA or the Agency shall enter the name of a person and such information as is prescribed by the *Children and Family Services Regulations* (S.N.S. 1990, c. 5, section s 47 - 54. in the Child Abuse Register where
 - i. the Tribunal finds that a child is in need of family preservation services in respect of the person within the meaning of the following:
 - a. The child has suffered serious or repeated physical harm inflicted by the child’s parent(s) or caregiver or caused by the parents’ or caregiver’s unwillingness or inability to care and provide for, or supervise and protect the child adequately; and
 - b. The child has been sexually abused or sexually exploited by the child’s parent(s) or caregiver or by another person where the child’s parent(s) or caregiver knew or should have known of the possibility of sexual abuse or sexual exploitation and was unwilling or unable to protect the child;

- ii. the person is convicted of an offence against or involving a child pursuant to the *Criminal Code* (Canada) as prescribed by the *Children and Family Services Regulations* (S.N.S. 1990, c. 5, sections 478(1) and (2). - 54 as prescribed in the regulations (see Regs 48(1) and (2)); or
 - iii. the Tribunal makes a finding pursuant to subsection (X) (next one).
- a) The **MGA or an Agency** may apply to the Tribunal, upon notice to the person whose name is intended to be entered in the Child Abuse Register, for a finding that, on the balance of probabilities, the person has harmed a child.
 - b) A hearing pursuant to section (X) (above) shall be held *in camera* except the Tribunal may permit any person to be present if the Tribunal considers it appropriate.

20.3 Notice of entry in and application to remove name from Child Abuse Register

- a) A person whose name is entered in the Child Abuse Register shall be given written notice of registration in the form as prescribed by the *Children and Family Services Regulations*, S.N.S. 1990, c. 5.
- b) A person whose name is entered on the Child Abuse Register may, upon providing written notice to the **MGA or Agency**, apply to the Tribunal at any time to have the person’s name removed from the Register and, if the Tribunal is satisfied by the person that the person does not pose a risk to children, the Tribunal shall order that the person’s name be removed from the Register.

20.4 Appeal respecting Child Abuse Register

A decision of the Tribunal pursuant to sections 19.6 (c) or 19.7(b) may, within thirty (30) days of the decision, be appealed to (whatever our appeal process is) and section 19.6(d) applies with the necessary changes having been made or with the necessary changes to the hearing of an appeal.

20.5 Confidentiality of Information in Child Abuse Register

- a) The information in the Child Abuse Register is confidential and shall be available only as provided in this Section.
- b) A person whose name is entered in the Child Abuse Register is entitled to inspect the information relating to them as entered in the Register.
- c) With the approval of the **MGA or Agency**, the information in the Child Abuse Register may be,
 - i. disclosed to an agency, including any corporation, society, federal, provincial, municipal or foreign state, government department, board or agency authorized or mandated to investigate whether or not a child is in need of family preservation services;
 - ii. disclosed to the police by an agency where the police and the agency are conducting a joint child abuse investigation;
 - iii. used for the purposes of research **as prescribed by the *Children and Family Services Regulations* (S.N.S. 1990, c.5.**
- d) Upon receiving a request in writing from a person, the MGA or Agency may disclose to the person,
 - i. whether the person’s name is entered in the Child Abuse Register; and
 - ii. where the person’s name is entered in the Child Abuse Register, any information respecting the person entered in the Child Abuses Register pursuant to **section 19.6(b).**

20.6 Former Child Abuse Register

- a) In this Section, “former Register” means the Child Abuse Register established and maintained pursuant to the former *Children and Family Services Act*.
- b) Where a person’s name appears on the former Register and the MGA or Agency is satisfied that the person has been convicted of an offence against a child contrary to the *Criminal Code* (Canada) as prescribed in the regulations, and which relates to the matter upon which registration on the former Register was based, the name of the person and such information as is prescribed by the regulations shall be entered in the Child Abuse Register pursuant to this Act.
- c) Where a person’s name appears in the former Register and an

application was made by that person to the Tribunal to have the information struck from the former Register and the application was dismissed, the name of the person and such information as is prescribed by the regulations shall be entered in the Child Abuse Register pursuant to this Act.

- d) Where a person’s name is entered in the Child Abuse Register pursuant to subsection (2) or (3), the person shall be given written notice of registration in the form prescribed by the regulations

21.0 GENERAL

21.1 Binding Provision

This Customary Code is binding on any entity involved in the enforcement of any provision in the Customary Code.

21.2 Protection from Liability

- a) Subject to section (b) below, no action lies or may be commenced or maintained against any individual, the [Agency] or its employees, or the Mi’kmaw Governing Body, in respect of anything done or omitted to be done in the exercise or intended exercise of any power or in the performance or intended performance of any duty or function under this Customary Code or its Regulations.
- b) Section (a) above does not apply in relation to anything done or omitted to be done in bad faith or gross negligence.

21.3 Indemnification

- a) The [Agency] shall, indemnify;
 - i. A present or former Director or officer of the [Agency];
 - ii. A person who has acted or acts at the request of the [Agency];
 - iii. An employee or former employee of the [Agency], unless that employee has not acted honestly and in good faith and with a view to the best interests of the [Agency]; and

- iv. The heirs, estate and trustees of a person referred to in sub-clauses (i) to (iii) against costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of holding such position, if that person acted honestly, in good faith, and with a view to the best interests of the [Agency], and in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, if that person had reasonable grounds for believing that the conduct that is the subject of the action or proceeding was lawful.
- b) The [Agency] shall not provide indemnities other than those:
 - i. Authorized by section (a) above.

21.4 Prohibitions

No person over the age of 19 years will:

- a) induce or attempt to induce a Mi'kmaw child or youth to run away from a placement entrusted with the care of the child or youth under this Customary Code;
- b) remove or attempt to remove a Mi'kmaw child or youth unlawfully from the care, control, or charge of the [Agency];
- c) detain or knowingly harbour a runaway Mi'kmaw child or youth placed in the temporary or extended care of the [Agency];
- d) abandon a Mi'kmaw child or youth they have the care, , control, or charge of without having made adequate provision for the child or youth's care, or harm the child or youth, or procure the abandonment, or harm of the child or youth; or
- e) omit to perform a duty imposed on them by or under this Customary Code.

21.5 Action and Punishment

- a) The Mi'kmaw Governing Body may enforce this Customary Code in accordance with its community standards and traditions, including a restorative justice model.

- b) Every person who contravenes this Customary Code may be subject to sanctions by the Mi'kmaw Governing Body in a manner that is consistent with Mi'kmaw customs, culture, practices, and values provided that such sanctions are proportionate to the seriousness of the action.

21.6 Computation of Time

- a) In this Customary Code, if the time limited for doing the matter expires or falls on a holiday, it may be done on the next day that is not a holiday.
- b) In this Customary Code, if the time limited for the doing of an act, expires or falls on a day which the [Agency] or Tribunal is not open for business, it may be addressed on the following business day when the [Agency] or Tribunal is open.
- c) “Day” means a calendar day ending at midnight, Atlantic Time.

21.7 Review and Amendment of the Customary Code

- a) This Customary Code may be amended with input from community members in the review process and the approval of the Mi'kmaw Governing Body.
- b) The Mi'kmaw Governing Body must undertake a review of the provisions and operations of the Customary Code initially at the two (2) year mark after the day on which this Customary Code comes into force, and every four (4) years thereafter, or earlier if required.
- c) The Mi'kmaw Governing Body must make available a written report to the Assembly of Nova Scotia Mi'kmaw Chiefs and all Mi'kmaw [Community members] in Nova Scotia to whom the Customary Code applies no later than one (1) year after the commencement of the review.
- d) Provision of the written report to applicable community members shall be made available through the Mi'kmaw Governing Body's website and directly upon request.

21.8 Report by the [Agency]

- a) The [Agency] must prepare an annual report for the Mi'kmaw Governing Body that sets out an overview of their operations, analysis, conclusions and recommendations on the provisions and operation of the Customary Code.
- b) The [Agency] must make their annual report available to the Mi'kmaw Governing Body and all Mi'kmaw [Community members] in Nova Scotia to whom the Customary Code applies no later than three (3) months after the completion of the report.

21.9 Mi'kmaw Governing Body Resolutions

- a) The Mi'kmaw Governing Body may make any resolution required to facilitate the operation of this Customary Code, but such resolutions are void if they conflict with any provisions of this Customary Code and are not in the best interests of a Mi'kmaw child.

21.10 Ownership of the Customary Code

- a) The Customary Code and any regulations or policies developed pursuant to it shall become the sole property of the Mi'kmaq of Nova Scotia.
- b) The Mi'kmaq of Nova Scotia can authorize any council, government, or other entity that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, to use the Customary Code for the benefit of the Mi'kmaw people within their jurisdiction.
- c) If a council, government or other entity to whom permission was granted by the Mi'kmaq of Nova Scotia to implement the Customary Code were to make any changes to it that adversely impacted the spirit, intent, or effectiveness of any regulations or policies developed on behalf of the Mi'kmaq of Nova Scotia, the council, government or other entity to whom permission was granted by the Mi'kmaq of Nova Scotia must rename it and remove all references, including the name of the Mi'kmaw Governing Body, from it.

21.11 Regulations

For the purposes of this Customary Code according to its intent, the Mi'kmaw Governing Body may make regulations prescribing any matter or thing required or

authorized by this Customary Code to be prescribed in the regulations and respecting any other matter or thing that the Mi’kmaw Governing Body considers necessary to carry out the purposes of this Customary Code.

21.12 Provincial Mi’kmaw File Transfer to Mi’kmaw Governing Body

- a) The Mi’kmaw Governing Body assumes ~~will assume~~ jurisdiction of the following services for Mi’kmaw [Community members] who reside on and off reserve in Nova Scotia once the Customary Code comes into force:
 - i. Intake and after hour services;
 - ii. Prevention and Early Help services;
 - iii. Family Preservation services;
 - iv. Placement services;
 - v. Children in care and transitioning to independence services;
 - vi. Applicable Adoption services; and
 - vii. Other associated administrative services.
- b) Mi’kmaw children in the care of the Nova Scotia Minister of Community Services and the Mi’kmaw Family & Children’s Services shall be transferred to the jurisdiction of the **Mi’kmaq of Nova Scotia** at the time this Customary Code comes into force.
- c) A Mi’kmaw child in the care of an [Agency] in a jurisdiction outside of Nova Scotia will continue with the permission of the Mi’kmaw [Agency], unless the Mi’kmaw agency requests the child be transferred to their jurisdiction.
- d) If the Mi’kmaw Agency has requested a transfer of a Mi’kmaw child to their jurisdiction, the Agency needs to have the permission of the child’s parent(s) or caregiver to do so.

21.13 Coming into Force

Upon the coming into force of this Customary Code,

- a) This Customary Code will come into force on the date announced by the **Assembly?/or Mi’kmaw Governing Body** through ceremony confirming and sanctioning the ratification and the coming into force of this Customary Code.

- b) For greater certainty, notwithstanding anything in this Customary Code, this Customary Code shall not apply in respect of any Mi'kmaw First Nation community in Nova Scotia until that community has assented to it.

DRAFT