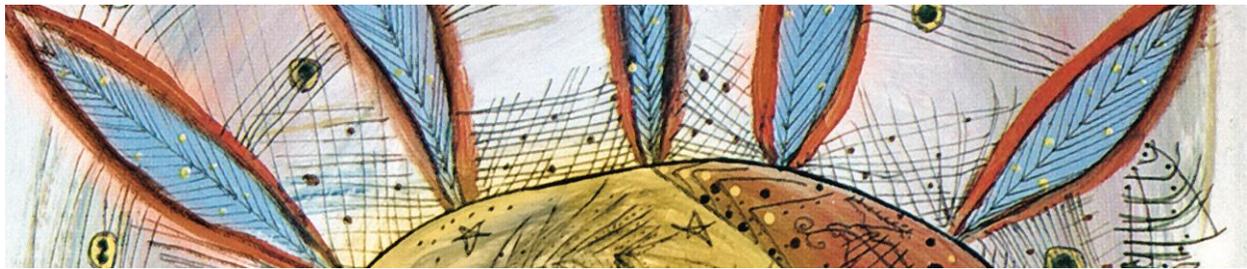


# Assembly of Nova Scotia Mi'kmaw Chiefs



## **Brief to Nova Scotia Law Amendments Committee**

*Adoptions Records Act – Bill 23: An Act to Open Adoption Records in Nova Scotia*

March 29, 2021

Submitted by:

Chief Deborah Robinson

Lead Chief for the Governance Portfolio

on behalf of the Assembly of Nova Scotia Mi'kmaw Chiefs

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Please accept this as the submission of the Assembly of Nova Scotia Mi'kmaw Chiefs (Assembly) on *Adoptions Records Act – Bill 23: An Act to Open Adoption Records in Nova Scotia*.

**Introduction:**

The Assembly is an unincorporated association consisting of all 11 of the 13 Mi'kmaw communities in Nova Scotia. It meets monthly to deliberate on issues common to all their Mi'kmaw communities and is the aggregate governance institution for the Mi'kmaq in the Province. Its work includes providing direction to the Mi'kmaw Negotiating Team in the “Made-in-Nova Scotia” negotiation process concerning Mi'kmaw Aboriginal and treaty rights governed by the *Framework Agreement* entered into by Canada, Nova Scotia and the Mi'kmaq on February 23, 2007. The Assembly also has delegated authority from their respective Chiefs and Councils to conduct formal consultation with the Crowns under the *Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process* entered into by Canada, the Province and the Mi'kmaq on August 31, 2010. The Assembly has developed a portfolio system and the Lead Chief for Governance is Chief Deborah Robinson of Acadia First Nation.

In 2017, the Assembly developed a strategic way forward including engagement with the federal government on a long-term strategic approach to the Mi'kmaq of Nova Scotia assuming complete jurisdiction and governance over matters affecting the welfare of children for all Mi'kmaq within Nova Scotia. The Assembly created the Maw'Kleyu'kik Knijannaq (MKK) Initiative - meaning “Keeping our Children Together” - to develop our own Mi'kmaw Law where we the Mi'kmaq resume jurisdiction and decision-making authority over our own children.

Maw-Kleyu'kik Knijannaq Initiative is at the Kwilmu'kw Maw-Klusuaqn Negotiation Office (KMKNO). The KMKNO is the secretariat to the Assembly of Nova Scotia Mi'kmaw Chiefs.

**Submission:**

The province of Nova Scotia has formally consulted with the Assembly on the proposed amendments to the *Adoptions Records Act* (the “Act”). With the understanding that further consultation will be completed in relation to the development of any policies or regulations to accompany the amended Act once it receives Royal Assent, the bands as represented by the Assembly, are supportive of the province moving toward open adoption records.

The KMKNO has completed an overview of the legislation and proposed provincial amendments on behalf of the Assembly. These written submissions along with the oral submissions that will be provided to the Law Amendments Committee by the MKK Legal Advisor, Heather McNeill, on March 29, 2021, are made on behalf of Chief Deborah Robinson, Lead Chief Mi'kmaw Women, Urban Mi'kmaq and Governance. Many of the amendments are supported, however, there needs to include amendments reflecting the distinct issues and needs of the Mi'kmaq in relation to opening adoption records in Nova Scotia.

Our comments to the proposed amendments by the Department of Community Services (DCS) are focused primarily on those that reflect Mi'kmaw content, culture and customs. Comments and suggested changes are provided in the spirit of strengthening those sections:

- Section 3(a) definition of “aboriginal child” - there needs to be a correction to the spelling of “Mi'kmaq” child. There are two spellings of Mi'kmaw; each used in different contexts. In this section it should be spelled “Mi'kmaw” child.
- Section 3(b) definition of “adopted person” – use the word “customary” (not custom) adoption on line 3.

The Mi'kmaq also have customary adoptions that proceed through the custom of the band and do not go through the Children and Family Services Act. These customary adoptions should also be included in this section; not just those through the Children and Family Services Act. The following is suggested wording for this definition:

(b) “adopted person” means a person who, unless otherwise specifically provided, has attained the age of majority and was adopted pursuant to, or whose adoption was recognized as a customary adoption under the Children and Family Services Act or any predecessor to that Act, or according to a band’s recognized customary adoption practices.

- Section 3(c) definition of “adoption order” should include a customary adoption order.
- Section 3(d) definition of “adoption records” - include customary adoption records in sub-section (iii).
- Section 3(iv) – we support the addition of “cultural” with reference to providing history of the adopted person in this section.
- Section 3(f) – same comments as in section 3(b) above.

- Section 3(h) – we support the definition of “band” in this section.
- Section 3(u) definition of “Mi’kmaw governing body” is important and needs to be in the Act. However, we ask that the following definition replace the DCS proposed definition as ours is more inclusive of our band councils and government:

Mi’kmaw governing body means a council, government or other entity that is authorized 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.

- Section 3(w) – we support the definition of “non-identifying information” in this section.
- There is no definition for “customary adoption” in the Act. We suggest inclusion of one similar to that found in the Children and Family Services Act (NS):

78A (1) Upon application, the court may recognize that an adoption of a person in accordance with the custom of a band or an aboriginal community has the effect of an adoption under this Act.

(Note: Do we want to add our own customary adoption definition? The one that has been accepted to date in the draft Mi’kmaw child welfare law is: “customary adoption” refers to the Mi’kmaw practice of transferring the on-going primary responsibility of a child from current parents or caregivers to a new caregiver according to the traditions, practices and customs of the band accepting the child).

- Section 8 and 9(3) – we support the inclusion of “cultural heritage” in these sections.
- Section 11(1)(b), 11(2), 15, 21(2), – need to include customary adoption orders in these sections.
- Section 17 – we support the inclusion of this section.
- Section 21(b) and 22(2)(c) – need to include “cultural” in terms of describing information in these sections.
- Section 24 – we support the inclusion of including an adopted person’s community of origin. This is very important to Mi’kmaw persons and their communities.

We suggest adding to the information collected by the register to include:

- 1) the name of the child's band of origin, and
- 2) the name of an Elder present at a customary adoption.

These inclusions should be added to all relevant sections of the Act regarding disclosure of information.

The Act needs to allow for the disclosure of information related to an adopted person to a Mi'kmaw governing body, particularly in instances where an individual who was adopted is claiming membership into the community.

Last, with respect to the Appeals process, we note there is no mechanism to allow for an alternative appeals process based on Mi'kmaw customary processes, when the appeal involves a person recognized as Mi'kmaq of Nova Scotia. We would ask that the Appeals process involve Mi'kmaq in it when dealing with an adoption request involving Mi'kmaq.

Thank you for your time and consideration of these requests.