



**Proposed Kwayaskastasowin Judiciary Act**

DRAFT

tabled to the MNLA on May 25, 2024 for consideration

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**An Act respecting the Métis Nation – Saskatchewan Judicial Body and providing for settlement of disputes in accordance with the principles of Kwayaskastasowin**

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**Preamble**

Whereas **otipemisiwak**, the people own themselves, is a fundamental principle of Métis identity with deep historical roots; and

Whereas the authority to create and run a Métis Judiciary includes the existing inherent rights of the Métis Nation – Saskatchewan, as recognized and affirmed by section 35 of the *Constitution Act, 1982*, the United Nations Declaration on the Rights of Indigenous People, the Métis Nation within Saskatchewan Self-Government Recognition and Implementation Agreement between Métis Nation – Saskatchewan and His Majesty the King in Right of Canada, dated February 23, 2023, the Métis Government Recognition and Self-Government Agreement between Métis Nation – Saskatchewan and Canada dated June 27, 2019; and



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Whereas Métis laws are not new to the Métis people; they have existed for generations and include: the laws of the Prairie including the laws for the colony of St. Laurent, the laws of the Buffalo Hunt, the *Manitoba Act* proposed by the Riel Provisional Government, and bylaws and constitutions for Métis representative organizations and governments in Saskatchewan; and

Whereas the Métis have a history of using a judiciary and courts since before 1870 when James Ross Esq. was confirmed as the Chief Justice of Assiniboia under the Honourable Louis Riel, President of the Provisional Government of Assiniboia; the Justices, Magistrates and other officials were appointed to act under the Provisional Government; the days for holding the Courts were fixed and Local Laws and regulations were adopted;<sup>1</sup> and

Whereas, as Métis nationhood is growing, more legislation is being developed and more areas of jurisdiction are reclaimed, the need to redevelop internal decision making is apparent; and

Whereas the Métis Judiciary embodies the spirit of Kwayaskastasowin – setting things right; and

Whereas the Kwayaskastasowin Judiciary is built with the input of the Métis people within Saskatchewan; and

Whereas **sâkihitowin**, love, is introduced as an important feature of the Kwayaskastasowin Judiciary. This is how community members want their family members treated within the Kwayaskastasowin Judiciary – with **sâkihitowin**; and

Whereas **wahkohtowin**, our kinship and connectedness to each other, has a place in the Kwayaskastasowin Judiciary because relationships are central to the way legal cases are processed; and

Whereas the Kwayaskastasowin Judiciary is built on the spirit of **wahkohtowin**, to connect communities and to build and restore relationships. It is inclusive and citizen centred, trustworthy and transparent; and

Whereas the values of **sâkihitowin** and **wahkohtowin** are central values of Métis people, the Kwayaskastasowin Judiciary will hold children at the centre of decision-considering them and their futures in decisions it makes; and

Whereas the Kwayaskastasowin Judiciary is based on **nihtohtamowin** – a deep and profound listening – listening so well that your speaker knows that they have been heard; and

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<sup>1</sup> *An Act Providing for the due Administration of Public Justice*, Legislative Assembly Chamber, Upper Fort Garry, 26 March 1870, ([Sessional Journal \(gov.mb.ca\)](#)).



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Whereas **kiyokeywin**, visiting, spending meaningful time connecting, is part of the Kwayaskastasowin Judiciary processes. The Kwayaskastasowin Judiciary will spend time visiting and connecting with communities before relationships break down; and

Whereas the Kwayaskastasowin Judiciary encourages people to make decisions for themselves creating space to resolve issues on their own; and

Whereas the Kwayaskastasowin Judiciary is created independently, separate and apart, from the Métis – Nation Saskatchewan governance process to act in trust and in the best interests of the Métis – Nation Saskatchewan and the Métis people; and

Whereas the above stated values are core to the Métis Nation within Saskatchewan; therefore:

**The Metis Nation Legislative Assembly, in accordance with the authority granted to it by the Métis Nation within Saskatchewan through its Constitution, enacts as follows:**

### PART I GENERAL

#### Short title

**1** This Act may be cited as the *Kwayaskastasowin Judiciary Act*.

#### Definitions

**2** In this Act:

“**Chief Justice**” means the Chief Justice of the MN-S Judicial Body appointed in accordance with this Act;

“**Community Panel**” means the Community Panel established under section 14;

“**Constitution**” means the *Métis Nation – Saskatchewan Constitution*;

“**Facilitative Panel**” means the Facilitative Panel established under section 15;

“**Hearing Panel**” means a Hearing Panel established under section 16;

“**Kwayaskastasowin**” means to work towards setting or re-establishing the situation, the people and the relationships on a good path;

“**MN-S laws**” means Acts enacted by the MNLA and regulations, rules or other documents or instruments enacted pursuant to the authority provided by an Act;

“**roster**” means one or more of the rosters of the MN-S Judicial Body, including the roster of judges, the roster of elders, the roster of youth, the roster of facilitators and the roster of experts as provided for in this Act.



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### PART II MN-S JUDICIAL BODY

#### **MN-S Judicial Body established**

**3** The MN-S Judicial Body, comprising Community Panels, Facilitative Panels and Hearing Panels, is established to:

- (a) administer processes and mechanisms to resolve disputes in a restorative way, relying on Métis-built methods; and
- (b) hear and determine matters brought to it.

#### **Composition**

**4(1)** The members of the MN-S Judicial Body include:

- (a) a Chief Justice; and
- (b) rosters of judges, elders, youth, facilitators and experts for the Chief Justice to draw from to establish Community Panels, Facilitative Panels and Hearing Panels.

(2) The members of the MN-S Judicial Body are entitled to be compensated for their services.

#### **Judicial Committee**

**5(1)** The Judicial Committee is established consisting of at least five MN-S Citizens as follows:

- (a) three lawyers licensed to practice law in a jurisdiction in Canada;
- (b) one elder residing in Saskatchewan; and
- (c) one youth residing in Saskatchewan.

(2) An individual who is a member of the MNLA, a Regional Council, or a Local Council, an employee of the MN-S, or a member of a board of or an employee of an affiliate is not eligible to be appointed as a member of the Judicial Committee.

(3) The PMC shall make regulations establishing criteria for selecting persons to be appointed to the Judicial Committee.

(4) The PMC shall appoint the members of the Judicial Committee in accordance with the criteria established in the regulations.

(5) The Judicial Committee shall:



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- (a) establish the criteria for selecting eligible persons as described in section 6 to be appointed:
  - (i) as the Chief Justice;
  - (ii) as judges to the roster of judges;
  - (iii) as elders to the roster of elders;
  - (iv) as youth to the roster of youth;
  - (v) as facilitators to the roster of facilitators; and
  - (vi) as experts to the roster of experts;
- (b) recommend to the PMC persons to be appointed as members of the MN-S Judicial Body;
- (c) determine the compensation to be paid to members of the Judicial Body; and
- (d) investigate complaints made concerning the conduct or fitness of members of the MN-S Judicial Body.

### **Eligibility for appointment**

- 6(1) In order to be eligible to be appointed as a member of the Judicial Body, an individual must be an MN-S Citizen who has life experience in and is respected by the Métis community.
- (2) In order to be eligible to be appointed as the Chief Justice, an individual must be eligible to be licensed to practice law in Saskatchewan and have been licensed to practice law in a jurisdiction in Canada for the 10 years prior to their appointment.
- (3) In order to be eligible to be appointed to the roster of judges, an individual must be eligible to be licensed to practice law in Saskatchewan and have been licensed to practice law in a jurisdiction in Canada for the five years prior to their appointment.
- (4) In order to be eligible to be appointed to and continue to serve on the roster of youth, an individual must be between 18 and 29 years old.
- (5) An individual who is a member of the Judicial Committee, the MNLA, a Regional Council, or a Local Council, an employee of the MN-S, or a member of a board of or an employee of an affiliate is not eligible to be appointed as a member of the MN-S Judicial Body.

### **Appointment**

- 7(1) The PMC shall appoint the members of the MN-S Judicial Body from the list of those recommended for appointment by the Judicial Committee.



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(2) The PMC shall report each appointment it makes to the MN-S Judicial Body to the MNLA at its next sitting.

(3) The Chief Justice and the judges appointed to the roster of judges hold office for a term of five years, and until a successor is appointed, and may be reappointed.

(4) Each member of the MN-S Judicial Body appointed to the roster of elders, youth, facilitators or experts holds office at the pleasure of the Chief Justice.

### Oath of office

**8(1)** Each member of the MN-S Judicial Body shall, at the beginning of each term of office to which they are appointed, take the following Oath or Affirmation of Office:

I solemnly swear (promise/affirm) on the voice of the people, that I will faithfully and impartially perform all of the duties of (the Chief Justice/a Judge/an Elder/a Youth/a Facilitator/an Expert) of the Métis Nation-Saskatchewan Judicial Body. I swear (affirm) that I will not bear envy, hatred or malice against anyone, and that I will not act from fear, favour or affection, or hope of reward in any case, but that I will faithfully act impartially between all parties. I will uphold MN-S laws and the Constitution, respect the rich history of my people and the courage and dedication of my ancestors for the benefit of the present and future generations. I will do my best to preserve the peace and build wahkotowin (good relations) so help me (God/Li Boon Jheu) (*omit this phrase in an affirmation.*)

### Independence

**9** The members of the MN-S Judicial Body are independent from the political and bureaucratic arms of the Métis Nation – Saskatchewan, and the MNLA affirms this independence.

### Jurisdiction

**10** The MN-S Judicial Body has jurisdiction and authority throughout Saskatchewan, in accordance with the principles of Kwayaskastasowin, to:

(a) prevent, resolve and decide disputes relating to:

(i) the validity, application, contravention and interpretation of the Constitution, MN-S laws, and MN-S policies;

(ii) actions, inactions or decisions of the MN-S;

(iii) complaints about the conduct of elected members of Local Councils, Regional Councils, the PMC or the MNLA;

(b) provide for the voluntary settlement of disputes between or involving MN-S Citizens;



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- (c) impose consequences for contraventions of MN-S laws or MN-S policies, as set out in that legislation or those policies;
- (d) determine whether the whole or any part of any MN-S law is within the jurisdiction of the MNLA or the delegated authority pursuant to the Constitution, and to make binding declarations in that regard;
- (e) hear and determine complaints, appeals, or other matters that are referred to it in an MN-S law;
- (f) review administrative decisions made by persons or entities pursuant to MN-S laws and MN-S policies and quash any of those decisions that it determines were not made lawfully and fairly or require persons to carry out duties imposed on them in MN-S laws.

### Reference questions

**11(1)** The PMC may refer an issue to the MN-S Judicial Body.

(2) The Chief Justice shall select a Hearing Panel in accordance with section 16 to hear and consider the issue and provide its opinion and reasons.

(3) The terms of the reference must:

- (a) set out the subject of the reference; and
- (b) name the parties to the proceedings.

(4) The MN-S Judicial Body may direct that any person interested, or any one or more persons as representatives of a class of interested persons, shall be notified of the hearing, and those persons may apply to be heard as intervenors on the matter.

## PART III KWAYASKASTASOWIN

### **Kwayaskastasowin (restorative approach)**

**12(1)** The objective of Kwayaskastasowin is to build and repair relationships with meaningful participation from the parties.

(2) Kwayaskastasowin is a restorative process that encompasses all aspects of the MN-S Judicial Body, including preventative and educational activities engaging communities, intake, fact finding and dispute resolution, whether through a facilitation process or a formal hearing.

(3) All parties shall participate in Kwayaskastasowin in good faith, with a heart and mind open to repairing relationships and resolving the dispute.



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(4) Kwayaskastasowin may include others besides the parties to a complaint where that involvement is conducive to repairing relationships and resolving the dispute.

### Community Panels

**13(1)** The Chief Justice shall select from the rosters an elder, a youth and an expert, if necessary to comprise a Community Panel, as required.

(2) The role of a Community Panel is pro-active, preventative and educational with the goal of building and restoring community.

(3) A Community Panel may refer individuals into the dispute resolution process.

### Facilitative Panels

**14(1)** The Chief Justice shall select from the rosters an elder, a youth, a facilitator, and an expert if necessary, to comprise a Facilitative Panel, as required.

(2) The role of a Facilitative Panel is to work to resolve issues without a formal hearing.

(3) Facilitative Panels conduct facilitation with the parties in private.

(4) The Facilitative Panel shall prepare any agreements reached by the parties at the conclusion of the facilitation process.

(5) Anything said during facilitation is confidential, unless the parties agree otherwise, and cannot be used as evidence or provided as information in a hearing by a Hearing Panel or in any other proceeding.

### Hearing Panels

**15(1)** Where a formal hearing is required, the Chief Justice shall select from the rosters a judge, an elder and a youth to comprise a Hearing Panel.

(2) The Hearing Panel may select an expert on a particular subject from the expert roster, as needed.

(4) All hearings held by a Hearing Panel are open to the public.

(5) A hearing or part of a hearing may take place in private if there is a compelling reason to do so as determined by the Hearing Panel.

(6) A Hearing Panel shall provide its decisions in writing and shall ensure that they are publicly available.

(7) A Hearing Panel must reach its decisions by consensus, if possible.





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(8) If a Hearing Panel cannot reach a consensus, the minority dissenting opinion must be reflected in the final written decision of the Hearing Panel.

(9) A decision of a Hearing Panel is final and cannot be appealed to the PMC, the MNLA, or the Saskatchewan or Canadian courts.

### **Conflict of interest**

**16** A member of a Community Panel, Facilitative Panel or Hearing Panel shall not participate in a matter in which that member has a conflict of interest.

### **Rules**

**17(1)** The Chief Justice shall make rules governing the proceedings of the MN-S Judicial Body, including the Kwayaskastasowin process and, in particular, shall make rules:

- (a) regulating the operation of Community Panels and Facilitative Panels;
- (b) regulating the operation of Hearing Panels and the conduct of hearings;
- (c) regulating procedure and documents in the MN-S Judicial Body;
- (d) respecting the admissibility of evidence;
- (e) respecting interpretation where required;
- (f) respecting the reliance on experts by Community Panels, Facilitative Panels and Hearing Panels;
- (g) relating to the application of Métis customary law;
- (h) allowing a Hearing Panel to conduct mediation during a hearing if the parties agree;
- (i) respecting authority to allow the MN-S Judicial Body to deal with urgent matters quickly;
- (j) respecting the duties of officers of the MN-S Judicial Body;
- (k) generally regulating:
  - (i) anything required by this Act or any other MN-S law to be governed by or subject to rules of the MN-S Judicial Body;
  - (ii) anything not sufficiently provided for in this Act; and



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(iii) any other thing that the Chief Justice considers necessary to better achieve the ends of justice and carrying into effect this Act and the provisions of other Acts respecting the MN-S Judicial Body.

(2) All rules of the MN-S Judicial Body must be publicly accessible.

(3) If an MN-S law sets out rules or procedures to bring a matter to the MN-S Judicial Body, those rules and procedures apply and take precedence over the rules of the MN-S Judicial Body.

### PART IV MISCELLANEOUS

#### **Employees and contractors**

**18(1)** The MN-S Judicial Body shall, under the direction of the Chief Justice:

- (a) appoint or employ intake officers, mediators, justice support workers and any other officers and employees that it considers necessary for the proper conduct of its business; and
- (b) determine the respective duties and powers, the conditions of employment and the remuneration of those officers and employees.

(2) The MN-S Judicial Body may engage the services of any legal counsel, consultants and technical advisors that it considers necessary to assist it in carrying out its responsibilities and may pay any fees and expenses in that regard.

#### **Financial**

**19(1)** The MN-S Judicial Body shall prepare and submit annually to the member of the PMC responsible for the administration of justice, in any form that the member may require, an estimate of its financial requirements for the following fiscal year.

(2) The MN-S Judicial Body may, to the extent that funds are provided to it, dedicate those funds in the way the MN-S Judicial Body considers necessary and advisable to carry out the purposes of this Act.

#### **Reporting**

**20** The MN-S Judicial Body shall annually provide a written report, accessible to MN-S Citizens, outlining its activities and statistics.

#### **Immunity from liability**

**21** No action lies or shall be commenced against a member of the MN-S Judicial Body or its officers, employees or contractors with respect to anything done, caused, permitted or authorized



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to be done, attempted to be done or omitted to be done by the member of the MN-S Judicial Body, officer, employee or contractor in the execution of their duties or with respect to any matter in which it is found that there was a lack or excess of jurisdiction, unless it is proved that the act or omission was done maliciously and without reasonable cause.

### Coming into force

**22(1)** This Act comes into force when it is enacted by the Métis Nation Legislative Assembly with respect to the following:

- (a) the Constitution;
- (b) appeals pursuant to the *Citizenship Act*;
- (c) an application pursuant to the *Election Act*:
  - (i) for a recount or addition;
  - (ii) to void an election; or
  - (iii) alleging a contravention of the Act.

(2) This Act comes into force with respect to any matter other than one described in subsection

(1) on a day or days to be fixed by resolution of the PMC.

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