



Office of the Child and Youth Advocate/PEI

**Submission to the PEI Legislative Assembly
Standing Committee on Education and Economic Growth**

**Discrimination in the School System, in Particular Homophobia
and Transphobia**

July 27, 2021

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Presenter: Marv Bernstein, Child and Youth Advocate

A) Introductory Comments

I would like to begin my remarks by thanking the Committee for inviting me to speak with you today. I am pleased to be joined by Rona Smith, our Office's Executive Director. I wish to preface my remarks with a series of acknowledgements on behalf of our Office.

We first wish to acknowledge we are meeting today on the traditional territory of the Mi'kmaq people. We acknowledge the continuing harm of colonialism and our team at the Office of the Child and Youth Advocate are committed to moving forward collaboratively with all Indigenous children, youth and their families, in the spirit of truth and reconciliation.

We next wish to acknowledge, with gratitude, the courageous children and youth who have allowed us to bear witness to their, often daily, lived experiences of bullying, harassment and discrimination in our educational system; a system responsible for ensuring and nurturing a safe learning environment for all students. We encourage children, youth and their families to continue to reach out to our Office for advocacy support when such victimization occurs in individual cases, as well as for the broader

societal purpose of promoting and protecting the human rights of all PEI children and youth within the education system.

We also wish to acknowledge the unprecedented challenges confronting the Department of Education and Lifelong Learning and the Public Schools Branch during this prolonged pandemic period. There are many individuals in a variety of roles in the education system who have gone the extra mile for Island children and youth. My daughter is a teacher in another jurisdiction and I know this has been a challenging period for her.

I note that there is expectation of a public report forthcoming with respect to the events that occurred at East Wiltshire Intermediate School and it will be instructive to consider the findings and recommendations contained in that report, which I have not yet seen

I also wish to commend this Committee for wanting to find enduring solutions to serious issues facing students within the education system of this province. In reviewing the transcripts of previous Committee meetings, I see that that the focus has not simply been on the homophobia and transphobia experienced at East Wiltshire Intermediate School, but on the importance of exploring bullying, harassment and other forms of discrimination in schools across the entire Island. This is a prudent approach, in my view, based upon the information provided to our Office as part of our individual advocacy function. My comments today will therefore not focus simply on the events at East Wiltshire Intermediate School, of which I have limited knowledge, but will hopefully illuminate a range of very

troubling concerns that reflect indications of physical assault, sexual assault, bullying, harassment and discrimination on a wider scale.

As the Child and Youth Advocate for PEI, I have a unique and privileged responsibility to amplify the voices of children and youth. As such, I will be opening my commentary today with quoted statements and words from PEI children and youth, who have shared their concerns with our Office over the course of our first year of operation. Some of these concerns have been expressed in my presence - and I personally find these reported experiences by these strong and courageous students to be deeply disturbing and entirely unacceptable.

In upholding children and youth's participatory rights, I will convey, with no identifying information, what children and youth in PEI have brought forward to date in regards to their experiences within education. These statements have been made to our Office on the basis that their identities will not be disclosed directly or indirectly.

Under section 12(1)(a) of the *Child and Youth Advocate Act*, I have a legislated responsibility to "represent the rights, interests and viewpoints of children and youth who are receiving or are eligible to receive reviewable services" It is not my place to suppress or sanitize their voices and their words for more comfortable public consumption. This is their truth, as communicated to our Office in their own words.

I will therefore share with you the unfiltered and unedited comments of these youth. Some of their language is graphic. I do this, acknowledging

and holding the utmost respect for the decorum of the Legislative Assembly and the professionalism of your Committee environment.

Some adults here today, those watching live, or reading a transcript at a later date, may find these statements shocking and difficult to hear, and may even wish to turn away. However, as adults, it is our responsibility to rise to the occasion and hear what children and youth are telling us, what is their norm, and often their everyday experience.

B) Unfiltered Voices of Island Youth

With that preamble, I will add that the statements I will be sharing are, for the most part, those made by youth who are 12 to 15 years of age, but they also include, in a couple of instances, statements from 16 and 17-year olds. As I read out these quotes, I will be indicating whether the statement is from a single youth or from multiple youth. I will now begin:

“Students talk about our vaginas, the smells of them. Bus drivers either ignore it, laugh along, or yell”. – from a single youth

“A student puts their phone up the shirts of girls. He takes pictures and shares them. He shares other porn openly” - from a single youth

“Guys can be taking their clothes off in the halls and no one does anything” – from a single youth

“It’s an everyday occurrence – guys shoving girls up against lockers and walls to feel them up” – from a single youth

“EAs, Teachers, Principals, Vice Principals... they are all dropping the ball for us” – from a single youth

“I bring up issues, and I still am getting threatened by other kids a month later” – from a single youth

“Even when you think it’s resolved, you get threatened even more” – from a single youth

“I feel guilty graduating, knowing this is what younger kids are going to have to put up with and I’m not going to be here to help” – from a single youth

“All of this affects your learning. Marks would be higher if the class would shut up” – from a single youth

“Adults just blame Snapchat or tiktok and say ‘boys will be boys’”- from multiple youth

“Students shout, ‘the gays can’t run’, to make the bus” – from a single youth

“The n-word is shouted out the windows of buses. Younger kids can hear it. It is shouted at students from Indigenous communities” – from a single youth

“When a fight is happening, teachers know. They just say kids are excited to go outside to try to pretend they don’t know what’s happening” – from a single youth

“Girls’ asses get smacked hard. You can hear it. It’s a competition to get the most and feel us up to see what kind of underwear we’re wearing. This went on for a month” – from a single youth

“This is all normal. It happens every day. No one even believes the EAs when they report it, or they are told not to worry about it” – from a single youth

“We’re shown videos on the Holocaust with piles of dead bodies, but then told to ‘teach ourselves’ about residential schools, sexual assault of children, rape, because it’s too graphic” – from a single youth

“It feels like we’re stuck in the ‘80s because nothing has evolved” - from a single youth

“The dress code is sexist” - from multiple youth

“I should be able to come to school peacefully” – from a single youth

“A kid calls me ‘gay’ because I hang out with another kid” – from a single youth

“Younger kids on the bus hear all this stuff. It’s not right” – from a single youth

“Girls are being sexually assaulted and physically touched” – from a single youth

“Teachers have given up” – from multiple youth

“You’re going to have to try something different” – from a single youth

“I don’t feel safe because nothing is changing” – from a single youth

Our Office has heard directly from parents and adult allies raising their concerns for children and youth safety in education as well. Staff of our Office have heard the following, reported by adults:

“Kids aren’t attending and are dropping out because of this.”

“My child won’t sleep in their own bed anymore, they are so anxious about school.”

“My happy, joyful, sweet child is now suicidal.”

Thank you to the Committee members present, to the live audience, and any future readers of these statements, for your willingness to hear and learn from the voices of PEI’s children and youth.

C) General Comments about Children’s Rights in the Educational Context

As you can see from these quotes, the concerns about homophobia and transphobia at East Wiltshire Intermediate School, while alarming in and by themselves, do not represent the full extent of adverse experiences of students in other Island schools. With prior knowledge of these voices of

other students, I stated in my media interviews after the events at East Wiltshire Intermediate School that I believed that the concerns evidenced at that particular school were simply the tip of the iceberg. I also asserted that children and youth in PEI have the right to access an appropriate standard of education in a safe learning environment and be protected in educational settings from all forms of discrimination and violence - be it physical assault, sexual assault, bullying, harassment, homophobia, transphobia or any form of emotional degradation. These are rights guaranteed in the United Nations Convention on the Rights of the Child and in human rights legislation.

As to the questions I raised in media interviews regarding East Wiltshire Intermediate School about: whether there was advance knowledge of these homophobic activities; whether there was sufficient support by school administration and teachers for the values enshrined in Pride Day celebrations; whether sufficient preventative action was taken by school administration and teachers; and why the students dressed in black were feeling so emboldened in their opposition to these celebrations - these questions were based upon media accounts I had read over the weekend - and not based upon any personal knowledge.

Having said that, I have been fortunate to consult with and obtain the views of credible professional sources both in this province and across Canada. A PEI source has expressed the view that homophobia and transphobia are not localized in a particular school, but are pervasive across the educational system on the Island. An important observation conveyed by this credible source is that there is a distinction between **interpersonal**

bullying, which targets a particular individual and **gender identity bullying, in the case of homophobia and transphobia**, which targets an entire community.

This same source went onto to express the view that when it comes to homophobia and transphobia, there is embedded in the PEI school culture a fear of rocking the boat and triggering a call from an angry parent, who may be opposed to broader gender identity initiatives in the schools. This source added that children and youth cannot learn and benefit from any curriculum when they are subject to homophobia and transphobia, and don't feel safe and welcome. Finally, this same source also expressed the concern that there is no explicit right to student safety from homophobia and transphobia in PEI schools and no corresponding mandate for teachers to ensure such safety.

The important takeaway, then, is both understanding and addressing the dynamics and potential structural deficits that gave rise to the recent incidents of homophobia and transphobia at East Wiltshire Intermediate School, while at the same time, appreciating that it is only one manifestation of violence and discrimination, albeit a very serious one, that is occurring in other Island schools. **We are therefore left to answer the larger systemic question: How do we create a safe learning environment for PEI children and youth in all Island schools?**

In exploring these rights-based issues, it is imperative that we avoid vilifying any particular child or youth or group of children or youth. A child or youth may not be entirely aware of the implications of their actions and may

think that their taunting behaviour is the norm - either because it was done to them previously, or because it is not discouraged by their own parents or caregivers. As conveyed to us by one Canadian subject-matter expert, with whom we consulted, **this is a systems problem – it is not a child and youth problem.** “The problem,” the expert continued, **“lies in the ways in which we create hierarchical systems designed for adults working in them, and not for youth themselves.”** This is why a focus on prevention and education for students, parents, educators, and our broader community, rather than on student punishment, is so important.

In recent research, Children First Canada, the University of Calgary and Alberta’s Children’s Hospital Research Institute jointly authored, *Raising Canada 2020: Top 10 Threats to Childhood in Canada and the Impact of COVID-19*. This Report bluntly states, “Children who are involved as both victims and perpetrators of bullying are at the highest risk for suicide.”

D) Importance of My Independent Role as Child and Youth Advocate and My Powers under the PEI *Child and Youth Advocate Act*

As you know, our Office, which was established on July 15th, 2020, is independent of government. This is a key requirement of any credible and fully functioning Child and Youth Advocate Office. It is a well-established international standard for offices promoting and protecting the human rights of children and youth. As an independent officer of the PEI Legislative Assembly, I do not report to any branch of the provincial government, but to the full Legislative Assembly through the Office of the Speaker.

Independence also means that within our Office, we are impartial and non-partisan in our words and actions. It provides our Office with the opportunity to serve children and youth and to advance their rights and well-being within the statutory parameters of the PEI *Child and Youth Advocate Act*. It allows us to speak freely and publicly about issues that are important to children and youth. It enables us to have a higher level of credibility, so that when the public hears from us, they can be confident that we are speaking on behalf of children and youth, and not simply on behalf of government.

My mandate under the PEI *Child and Youth Advocate Act* is broad and layered. It involves representing the rights, interests and viewpoints of all PEI children and youth through advocacy, reviews, investigations, public education, research and child/youth engagement. Advocacy, reviews and investigations can be both individual or systemic in relation to reviewable services, which includes the Department of Education and Lifelong Learning. The governing legislation also stipulates that I “may” exercise my investigation authority, thus reinforcing my discretion in this sphere of activity.

My staff and I have had the opportunity to review the transcripts of your June 15th, June 22nd and July 13th Committee meetings. In order to clarify a few matters that were under discussion, I wish to point out - first that there is no authority in the *Child and Youth Advocate Act* for any person or Committee to order or direct me to undertake any particular activity, although I take all such requests very seriously. Secondly, I do not need to wait for a request or invitation to undertake any of the functions that are set

out in my legislative mandate. I can act on my own motion where I deem it appropriate to do so.

My choice of actions can vary. Each decision, each course of action decided upon within our Office is methodically reflected upon with critical thinking, and always through the lens of children's rights. My staff and I look to determine what roles are required of our Office, and what course of action best serves the public.

E) Limitations in the Capacity of Our Office

Given the invitation you have extended to me to speak with you today, I wish to underscore the capacity limitations of a still relatively new Child and Youth Advocate Office. It has only been one year since the governing legislation was enacted and our Office opened its doors- most notably during a global pandemic.

We are very busy with a number of activities and have limited staff and resource capacity within our Office. I say respectfully that we are not in a position to launch into a full-scale investigation that would comprise (in the words of this Committee) an examination of "discrimination in the school system based on age, association, colour, race, ethnic or national origin, creed or religion; criminal conviction; disability; family or marital status; gender expression and gender identity; political belief; sex; sexual orientation; or source of income." Our Office's mandate, as a single independent Office, is not to do government's work, or take on the effort to address every form of discrimination within a public service.

Since our Office opened a little over a year ago, aside from other areas of responsibility, we have met the needs of 218 requests for advocacy services, impacting a combined 273 children and youth. 54% of these children are under the age of 12. 66% or two thirds of all calls to our Office involve Child Protection Services.

In contrast, only 10% of the referrals to our Office involve Education, which illustrates the point that education, while an important reviewable service, is not the single most pressing area of concern within the function of our Office.

Our individual advocacy requests, as described, continue to increase month over month, as more individuals become aware of the new legislation and mandate of our Office.

Our Office needs to move forward with feasible actionable steps that are realistic and scalable within human and financial resources and can make a tangible difference in the life conditions of children and youth in this province.

F) Potential Options for Our Office

At this juncture, my staff and I believe that we do not have the staffing or capacity to undertake a full-scale investigation, but we do not want to stand on the sidelines either - and we are willing to **consider** undertaking a few

focused potential options in response to what appears to be a serious systemic issue. Those options would include:

1. **Child and youth engagement opportunities as a participatory right to further create amplification for the experiences of children and youth within education** – this could take the form of a survey, a child and youth summit, a series of child and youth focus groups, or a child and youth forum - structures that can be developed to further create safe space for children and youth to give effect to their right to express their views and be heard in matters affecting them. This approach could provide students from across the province with the opportunity to contribute, without stigma and vilification, or further trauma. Our Office could oversee the supports necessary to ensure physical and mental safe space is created to allow us all, as the adults of our community, to learn further, and hear directly, from children and youth in PEI who experience our education system daily. They would not only be asked to describe whether they have experienced a safe learning environment, but the key factors that contribute to such an environment, and their recommendations for positive systemic change;
2. Secondly, an examination conducted by our Office providing public feedback on selected policies through a child rights lens, using the United Nations Convention on the Rights of the Child, ratified by Canada almost 30 years ago, as our primary reference guide. Examples of such policies would be the *Safe and Caring Learning Environments Policy and Operational Procedure* and

also the *draft Guidelines for Respecting, Accommodating and Supporting Gender Identity, Gender Expression and Sexual Orientation in our Schools*; and

3. Additionally, an examination conducted by our Office on what formal complaints mechanisms are available for children, youth and their families through a children's rights lens, to have fair, transparent and publicly accessible processes to elevate their concerns as needed. Here it seems that many children, youth and parents do not know how to challenge actions that are contributing to children and youth feeling unsafe and fearful in their school learning environment, or how to neutralize power imbalances and include support persons, as part of that process.

As previously referenced, we have also been consulting with experts in the field and there may be more that we could consider doing based upon further consultation and advice.

G) Concluding Remarks

In conclusion, I wish to stress that at the end of the day, legislation, regulations, directives, policies and guidelines are only words on a page and what is required is an attitudinal shift and a commitment by all of us to take the necessary action steps.

What is required, in the view of our Office, is a child-rights approach, which has been defined by the UN Committee on the Rights of the Child, as one

that “requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as rights-bearing individuals, rather than perceiving them primarily as ‘victims [or as objects of charity]’”.

In a webinar to launch the global *Safe to Learn Strategy: 2021-2024*, with Canada being one of 14 sponsors, and which I viewed last week, the case was made that if we do not invest in creating a safer learning environment for our children, we will see an increasing number of negative impacts – for example, children and youth who feel depressed; are anxious; are fearful; attend school less frequently or drop out entirely; experience lower grades academically; suffer from mental health and addictions, are more prone to accept or inflict violence, and even engage in self-destructive or suicidal acts.

I close my presentation with the important words of a youth reflecting on their fears and inability to feel safe at school:

“This happens all the time”.

Rona and I are happy to take some questions at this point. However, our responses may be limited due to the privacy safeguards set out in the PEI Child and Youth Advocate Act.