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PRESS RELEASE

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For Immediate Release

Creating a Culture Shift by Embedding Children’s Rights in Legislation, Regulations, Policies and Practices – Child and Youth Advocate Annual Report

CHARLOTTETOWN – The Child and Youth Advocate has presented his second Annual Report to the Speaker of the Legislative Assembly for the period April 1, 2021 to March 31, 2022. “During the past year, individual advocacy has continued to be a central focus of our work. Creating safe and respectful space for the views and voices of children and youth to be heard is crucial to this function. Another important element in individual advocacy is empowering children and youth to exercise their right to influence positive change and seek meaningful resolution to matters impacting them”, states Marv Bernstein, PEI’s first independent Child and Youth Advocate. “When we directly engage children and youth and actively listen to them, we often uncover potential systemic issues impacting groups of children and youth”, adds Bernstein.

“Since opening our doors on July 15, 2020, we have been learning more and more about the governmental and societal response to viewing children and youth as individuals with rights to be exercised and voices to be heard. I am pleased to report a growing understanding of the role of our Office by senior management and staff working in reviewable services and an increased willingness to participate in difficult, but respectful conversations, and to problem solve using our best collective wisdom. I have been impressed by the many dedicated individuals across various government departments and community organizations, who are eager to learn more about children’s rights and are doing their very best to create the conditions where children and youth can thrive and reach their full potential”, notes Bernstein.

“At the same time, over the almost three years that our Office has been open, we have also seen many layers of challenges, at a systemic level, impacting the well-being, interests and rights of PEI children and youth. These challenges include: arbitrary and variant age thresholds limiting rights in legislation, regulations, policies, procedures and practice standards; an absence of inclusive, child-friendly and transparent complaint processes when receiving reviewable services, which includes education, health care, child protection, justice, and social assistance; an inability of children and youth to participate directly in reviewable service decisions being made about them; an inequity in access to justice through an absence of independent legal counsel when Child Protection Services are involved; a lack of a whole of government implementation of a transparent Child Rights Impact Assessment process; and an absence of embedded children’s rights in provincial legislation and regulations. These are consistent child rights issues being brought to the attention of our Office”, states Bernstein.

Child rights issues, identified in the provision of individual advocacy, illustrate the importance of individual advocacy informing systemic advocacy on behalf of the rights of groups of PEI children and youth. Bernstein notes, “Staff of the Office have engaged in systemic advocacy with the goal of creating a culture shift and embedding children’s rights in legislation, regulations, policies and practices. As an example, our Office has filed a detailed written submission with the Standing Committee on Health and Social Development in response to proposed new child protection legislation and has developed a plain language version of the now 27 recommendations provided to the Minister and Deputy Minister of Social Development and Seniors, available on the homepage of the Office’s website, at www.childandyouthadvocatepei.ca, and appended to this Press Release.” Bernstein further adds, “ I have appreciated the goodwill of the Department of Social Development and Seniors in providing me with successive versions of proposed child protection legislation and having continuing constructive discussions, with a view to achieving greater agreement on a wide range of important matters before a Bill is introduced into the House.”

Additionally, in response to concerns about the vacuum in independent legal representation for children in child protection matters, coupled with an absence of clear criteria and a viable mechanism for providing that legal representation, the Office of the Child and Youth Advocate continues to promote collaborative engagement with the Departments of Justice and Public Safety and Social Development and Seniors. Bernstein states, “There is a need to ensure that some of PEI’s most vulnerable children and youth have access to justice and a voice in the court process. It is unfair that children involved in other types of legal proceedings in PEI can have the benefit of independent legal representation, but children, who have been neglected or abused and already feel disempowered, do not have a similar voice in child protection proceedings.”

Bernstein states, “On December 13, 2021, we celebrated the thirtieth anniversary of Canada’s ratification of the United Nations Convention on the Rights of the Child. This historic occasion provides all of us with an opportunity to consider the original vision of the Convention and to take stock of how far we have come in implementing these universal and interdependent rights. PEI, as a province, is legally obligated to implement the provisions of this international treaty. By embedding children’s rights in legislation, regulations, policies and practices, we are establishing the framework for a child-rights respecting culture in PEI, where children and youth can look forward to a happy, healthy and fulfilling life, with the full recognition of their evolving agency and maturity”.

To learn more about the work of the Office of the Child and Youth Advocate and to view the Annual Report for 2021-2022 , please visit www.childandyouthadvocatepei.ca

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A Necessary Paradigm Shift for Child Protection Legislation in PEI: Plain Language Summary of the 27 OCYA Recommendations in response to the draft *Child, Youth and Family Services Act* (Rev May 2023)

Introduction

For ease of reference, the present document is an updated Plain Language Summary of the 27 recommendations advanced by the Office of the Child and Youth Advocate in response to the proposed draft *Child, Youth and Family Services Act*. The full text of the first 20 Recommendations (with accompanying Rationale) is set out in the document called “OCYA Submission to the Standing Committee on Health and Social Development in response to the Proposed *Child, Youth and Family Services Act: A Rare Moment in Time – An Opportunity to Establish a Culture Shift in Child Protection Legislation that Recognizes PEI Children and Youth as Individuals with Rights to be Respected and Voices to be Heard*” (February 2022). This Submission is also available on our Office’s website at www.childandyouthadvocatepei.ca.

When considering the critical importance of legislation that will intimately impact the lives of children and youth, it is my strongly held opinion that these recommendations are the minimum required to create truly rights-adhering child welfare legislation. The recommended provisions cannot wait for a five-year review of the legislation, and nor should they be left to later regulatory or policy drafting. Regulations and policies provide the details of how services are to be administered, but the legislation provides the legal obligations, and this is where rights must be enshrined.

Updated Summary of OCYA Recommendations for the Proposed *Child, Youth and Family Services Act*

1. An independent Child Rights Impact Assessment was completed on the draft legislation, and all ten of its recommendations should be incorporated into the new Act.
2. The proposed legislation should be referred to the Legislative Assembly’s Standing Committee on Health and Social Development for a detailed review.
3. A comprehensive child rights section should be added to the legislation, including rights to have their opinions considered, to privacy, to appropriate education, to health services, and to recreational activities.
4. The rights of children included in the legislation should be modelled on Ontario’s legislation, in which there is a clear description of specific rights for children and youth receiving child welfare services, as well as for children and youth in government care. The legislation must also clearly state the obligations on service providers to respect the rights of children and youth.
5. The legislation should include an accessible and independent complaints mechanism for children and youth, including access to representatives and an appeal process.
6. An obligation should be included to require service providers to facilitate contact by children and youth with the Office of the Child and Youth Advocate, including the ability to have private communications.
7. Clear requirements should be included in the legislation to mirror the access to information powers under the *Child and Youth Advocate Act*.
8. Children and youth should have the right to standing as a party in proceedings under the proposed *Child, Youth and Family Services Act*, along with the right to have legal representation appointed.

9. The proposed *Child, Youth and Family Services Act* should include criteria to assist a court in determining whether legal representation of a child is necessary to ensure that the child's interests are adequately protected in a proceeding under the Act.
10. The proposed legislation should clearly provide that in all instances where decisions are being made that impact children and youth, their views and wishes must be ascertained and given due weight in accordance with their age and maturity.
11. The proposed legislation should include children and youth and a representative from the Office of the Child and Youth Advocate in the list of participants for purposes of the definitions of "family group conference" and "mediation".
12. The definition of 'the best interests of the child' in the proposed legislation should be more comprehensive, reflecting Indigenous rights as well as equality rights of children and youth with disabilities and children and youth from minority groups.
13. The provision that allows a court to exclude a child from a child protection hearing or any part of it without specifying any criteria should be amended to stipulate that such judicial discretion can only be exercised when determining that it is the best interests of the child to make an exclusionary order.
14. There should be specific provisions that require Family Intervention Plans to include educational, recreational, and developmental considerations, along with a clear statement that each plan must reflect the best interests of the child or youth.
15. A requirement of mandatory periodic review of the legislation should be incorporated in the proposed *Child, Youth and Family Services Act*, and this review should include a Child Rights Impact Assessment that seeks out and includes the views of children and youth impacted by the legislation, as well as systematic data collection and qualitative assessment of the impacts and outcomes of the services provided.
16. The periodic reviews of the legislation should be conducted by a Standing Committee of the PEI Legislative Assembly, with meaningful consultation of children and youth and the active participation of the Office of the Child and Youth Advocate, with results to be made publicly available.
17. Provisions of the proposed legislation respecting the application of *An Act respecting First Nations, Inuit and Metis children, youth and families* should specify that all Indigenous children and youth in PEI will be treated in accordance with the principles and standards set out in the federal legislation, and should also reference the United Nations Declaration on the Rights of Indigenous Peoples.
18. The legislation should include a Preamble or Statement of Principles that clearly situates the child and the child's rights at the centre of decisions.
19. The proposed legislation should make explicit that the duty to report suspected child abuse or neglect is a personal duty that cannot be delegated, and that the continuing obligation to report applies to every person.
20. The definition of "youth" in the proposed legislation as meaning "a child who is 16 or 17 years of age" should be amended to conform with the definition of "youth" in the PEI *Child and Youth Advocate Act* meaning "a person over the age of 12 years and under the age of 18 years."
21. The proposed legislation should include parental educational neglect as part of the definition of 'emotional harm' which can ground a finding that a child is in need of protection.
22. The proposed legislation should include the right of the child to access their own personal information, regardless of age, on the basis of their presumed capacity, unless the Director of

Child Protection has reasonable grounds to believe that the child does not have the requisite capacity.

23. The proposed legislation should specify that a plan of care for a child in care will not be effective unless the plan of care has been explained to the child in a manner appropriate to the child and the Director of Child Protection has considered the views of the child.
24. Youth who are 16 or 17 years of age should have the right to enter into an agreement with the Director of Child Protection, who determines that there are reasonable grounds to believe that the youth is in need of protection, for admission to care, or for supports and services, independent of parental consent, on the basis of the youth's presumed capacity, unless the Director of Child Protection has reasonable grounds to believe that the youth does not have the requisite capacity.
25. The conditions required for a temporary or permanent agreement between a parent and the Director of Child Protection should be restored to those set out in the current *Child Protection Act*, subject to removing minimal age requirements, and including the obligations of the Director of Child Protection: to explain to the child in a manner appropriate to the child, the reasons for, and the nature, effect and implications of the proposed agreement; to consider the views of the child; to cause further assessment to be made, where the child proposes an alternative or expresses opposition to the proposed agreement; and to be satisfied that the agreement is in the best interests of the child.
26. The proposed legislation should include an exception to the Director of Child Protection's right to access information about a child, where such information is in the possession of the Office of the Child and Youth Advocate, with a view to protecting the privacy of those children, youth and other individuals who engage with the Office of the Child and Youth Advocate.
27. The proposed legislation should retain those provisions in the PEI *Child Protection Act* relied upon by the Supreme Court of Canada in the decision of *B.J.T. v. J.D.*, specifically in relation to the Preamble and 'the best interests of the child' considerations, which have now established settled jurisprudence and predictability in child protection matters.