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Major advancements in the rights, participatory views and best interests of children and youth, but much work lies ahead to support successful implementation of the proposed *Child, Youth and Family Services Act* introduced by Government

CHARLOTTETOWN – The Child and Youth Advocate, Marv Bernstein, is providing this Press Release in response to Bill No. 32, the PEI *Child, Youth and Family Services Act*, tabled November 7, 2023, in the PEI Legislature. A detailed Submission is being transmitted to the Chair of the Legislative Assembly Standing Committee on Health and Social Development today. This Submission includes an Executive Summary; the Office of the Child and Youth Advocate’s twenty-seven (27) recommendations; the corresponding recommendation compliance ratings; and statements of rationale and analysis.

“At the outset, I wish to acknowledge the complexity of child protection work and recognize the tireless efforts of the many dedicated child protection professionals in this Province, who give so much of themselves to protect children, support families and strengthen communities, every single day. They are asked to make difficult on-the-ground decisions and are too often criticized by others who have the benefit of hindsight”, remarks Bernstein.

“I also wish to acknowledge the goodwill and cooperation extended to our Office over the past year by senior staff in the Department of Social Development and Seniors. These meetings have been cordial, respectful and collaborative, with sincere efforts made to reach consensus on a multitude of issues”, states Bernstein.

“In my view, the proposed new *Child, Youth and Family Services Act* is historic, groundbreaking and aspirational legislation in its promotion of the rights, participatory views and best interests of children and youth, for which Government is to be commended. It represents a dramatic paradigm shift for the Province in its move away from a paternalistic needs-based approach where children and youth have limited voice. It recognizes children and youth as individuals with rights to be respected and voices to be heard. It places children and youth at the centre of decision-making and treats them as active participants when decisions are being made that affect them”, says Bernstein.

“While it has taken a substantial amount of time to get to this point, the Office of the Child and Youth Advocate has used this opportunity to engage in continuous advocacy through many meetings. Tangible and dramatic advancements to promote the rights and well-being of children and youth are embedded in the proposed *Child, Youth and Family Services Act*”, says Bernstein. Some of the notable child rights advancements include: explicit reference to the United Nations Convention on the Rights of the Child; a listing of the specific rights for children and youth in care, and a separate listing of those rights for children and youth in receipt of services under the proposed *Act*, whether in or out of care; the views of the child are to be given due consideration in matters affecting them; a clear statement of the best interests of the child as the paramount consideration in all decision-making under the *Act*, with its new inclusion of “the child’s sexual orientation, gender identity and gender expression” as a relevant factor; eligibility for

transitional supports and services for youth aging out of care are increased from up to twenty-one years of age to up to twenty-five years of age; the ability of children, regardless of age, to access their own information, participate in the development of their plans of care and have the benefit of legal representation in child protection matters; the ability of children to have greater permanency in their placements with grandparents and alternative caregivers; provision for collaborative out-of-court mechanisms, such as family group conferencing and mediation; and the requirement that periodic reviews of the legislation involve a Child Rights Impact Assessment, commonly referred to as a 'CRIA'.

At the same time as celebrating and recognizing these positive developments, there is the caveat that there is still considerable work ahead to support successful implementation of this new legislation. This is reflected in the need for government to continue to assess the gaps where there has been either partial or no compliance with the recommendations advanced by our Office”, states Bernstein. These areas of omission include: the removal of a Preamble as an interpretative aid; the absence of harmonization and alignment with the provisions of the *Child and Youth Advocate Act*, potentially affecting the ability of the Child and Youth Advocate: to access information in the custody of the Director of Child Protection in particular circumstances, to fully participate on behalf of a child or youth in family group conferences and mediation, and to fully safeguard the privacy of records and information in the possession of the Office of the Child and Youth Advocate; the lack of a child rights focus in Family Intervention Plans; the absence of an independent mandatory periodic review process for child protection legislation every five years, to be convened and conducted by a Standing Committee of the PEI Legislature; the absence of a clearly defined, transparent and objective child friendly complaint mechanism for children, youth and families; the inability of 16 and 17-year old youth to enter into agreements with the Director of Child Protection for admission to care and supports without parental consent; and the ineligibility of children and youth to gain standing or party status in child protection court proceedings.

“With greater legal rights being afforded to children and youth, there are corresponding heightened legal obligations placed on front-line child protection staff. Crucial to the success of the enactment of this proposed legislation is Government’s investment in the following initiatives: a sufficient number of full-time front-line child protection employees; effective recruitment and retention strategies; well-planned child rights and other professional development training, to include the Office of the Child and Youth Advocate; the availability of strong leadership and clinical supervision; reasonable workload allowing for appropriate direct client contact and manageable caseloads; and a sufficient number of case aide workers to allow child protection staff to use their clinical and helping skills to greatest advantage”, says Bernstein.

“While the proposed new legislation is child-rights based and very progressive, nevertheless at the end of the day, the legislation is only one part of the paradigm shift equation in the realization of children’s rights. Government will also have to follow through on developing child-centred and rights-based regulations and policy, optimally applying a Child Rights Impact Assessment analysis. The challenge lies in transforming the ‘paper rights’ of this new aspirational legislation into ‘lived rights’ for the children, youth and families served and impacted. It will take all of us working together to achieve the full scope of this paradigm shift”, says Bernstein

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