April 6, 2026

Hon. Robert Lantz
Matthew MacFarlane
Robert Mitchell
P.O. Box 2000
Charlottetown, PE C1A 7N8

Dear Premier and Leaders of the Official Opposition and Third Party,

Re: Response from OCYA and OCYA Child and Youth Advisory Committee to Bill No. 103, *An Act to amend the Child, Youth and Family Services Act*

I understand that MLA Simpson's Bill No. 103, *An Act to amend the Child, Youth and Family Services Act* has now been tabled in the PEI legislature.

As Child and Youth Advocate for PEI and as an independent officer of the PEI Legislature, I have a statutory and ethical responsibility to the children and youth of this province which I take very seriously. I very much appreciate that the sponsoring MLA has sought feedback from both my Office and the members of my Office's Child and Youth Advisory Committee. Now that this Bill has been tabled, I wish to ensure that that there is transparency and that these two perspectives (this expanded response from my Office and from my Office's Child and Youth Advisory Committee) are shared equally with all Party Leaders.

Given that the proposed Bill is in the arena of child protection law, it may be relevant to point out that I practiced child protection law in the province of Ontario for the first twenty-eight years of my professional career (3 years as In-house Counsel to the York Region Children's Aid Society; 20 years as Chief Counsel to the Catholic Children's Aid Society of Toronto; and 5 years as Director of Policy and Legal Support to the Ontario Association of Children's Aid Societies). During this period of time, I litigated child protection cases at all court levels, including the Supreme Court of Canada. I also authored/co-authored child protection legal texts, looseleaf publications and articles that were widely published for the benefit of child protection professionals and the legal profession.

To be clear from the outset, I wish to express my Office's respect for the underpinning intention and the potential remedies set out in the proposed amendments to protect children and youth from harm where they have left parental care without consent. Notwithstanding that laudatory intent, I am compelled to convey both my Office's opposition to Bill No. 103 and the serious concerns expressed by the members of my Office's Child and Youth Advisory Committee, who reached their conclusions on their own, without any prompting. Their response is provided as an attachment to this letter.

I note that there has been no Child Rights Impact Assessment (CRIA) provided to my Office, in full or in part, with respect to Bill No. 103. Notwithstanding that fact, the starting point is to recognize that children and youth are individuals with rights to be respected as rights-holders under the United Nations Convention on the Rights of the Child (UNCRC) and with voices to be heard and meaningfully

considered. However, the proposed amendments seem to treat children, regardless of age, as a form of static property, rather than as individuals with growing agency and evolving maturity and capacity to make informed decisions about their own safety and security. In this regard, paragraphs 5 and 10 of the Guidance *Statement of the Committee on the Rights of the Child on article 5 of the Convention on the Rights of the Child* (dated 11 October, 2023), available at https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/statements/CRC-Article-5-statement.pdf, provides the following relevant commentary:

> "*The Committee reiterates that article 5 [parental guidance and a child's evolving capacities] affirms that all children have rights, irrespective of their age, and that as they grow, develop, mature, and expand their social circle beyond their family, they are entitled to an increasing level of responsibility, agency, and autonomy in the exercise of those rights. Children's evolving capacities must be recognized and respected by those adults who provide direction and guidance over children's lives.*
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> *…The Committee reaffirms that the concept of children's evolving capacities is central to the recognition of children's status as rights-holders independently from their parents, and contributes to protecting the child from arbitrary family control. It establishes that when children reach a sufficient level of maturity and capacity to exercise their rights independently, there will be a decreasing need for parental direction and guidance. As children acquire capacities, they are entitled to an increasing level of responsibility for the regulation of matters affecting them. The evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression, and which are often inaccurately justified by pointing to children's relative immaturity."*

Moreover, in any decision affecting the best interests of the child, the views of the child should be heard and given due weight before such decisions are made. This point is clearly made by the Committee on the Rights of the Child in paragraphs 68 and 74, when explaining both the relationship between article 12 [respect for the views of the child] and all other UNCRC articles, and in particular the complementary relationship between articles 12 and 3 [the best interests of the child], in its General Comment No. 12 (2009) *on the Right* of the child to be heard, available at https://resourcecentre.savethechildren.net/pdf/5040.pdf:

> "*Article 12, as a general principle, is linked to the other general principles of the Convention, such as article 2 (the right to non-discrimination), article 6 (the right to life, survival and development) and, in particular, is interdependent with article 3 (primary consideration of the best interests of the child). The article is also closely linked with the articles related to civil rights and freedoms, particularly article 13 (the right to freedom of expression) and article 17 (the right to information). Furthermore, article 12 is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.*
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> *There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In*

fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives."

In considering the merits of the proposed amendments, it is important to look at how warrant provisions are addressed in other Canadian jurisdictions. In my experience, warrant provisions in child protection legislation are generally limited to one of two situations. The first is where the child is at imminent risk of harm from the parent and the warrant is required to apprehend the child. The second situation is where the child has left the care of Child Protection Services without consent and a warrant is required to bring that child back into care. Notably, the situation envisioned by Bill No. 103 is not one typically covered by warrant provisions in child protection legislation in this country.

In addition, these issues are complex and layered and there may be unintended negative consequences emerging from the proposed legislative amendments. Whilst we have knowledge, through my Office's individual advocacy function, of situations where such amendments may help to protect children and youth who are in harm's way, we are also aware of situations where such changes could potentially put children at greater risk.

There are complexities in situations involving domestic violence, coercive control and high conflict custody cases. There are additional complexities where Child Protection may not have been able to secure sufficient evidence to open a service, and parents have resisted voluntary agreements, but children themselves continue to experience concerns about their safety and wellbeing in the home. At present, children and youth, particularly as they mature, have the potential to create their own safety plans, outside of Child Protection involvement. I am concerned that the amendments set out in Bill No. 103 could frustrate the ability of children and youth to make their own determination of safety, particularly where they are leaving parental care out of a sense of self-protection to avoid an abusive or neglectful family situation or one where there is frequent exposure to domestic violence. This very concern is well articulated by the Office's Child and Youth Advisory Committee:

> "*We are worried about these changes and the impact on children. What if the child does not want to be home? There are lots of reasons to run away. We feel this change is seeing things as black and white, when really there are lots of different situations. Some children might feel they have to run. What if a child is being abused and is trying to run away to safety, but then you make them go home? This would not be protecting them. It would hurt them even more*.
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> *Parents lie. There are cases where there is abuse and CPS investigate a bit, but they miss things. Kids might then run away. If the police bring them back home, it continues the cycle. There could be lots of underlying reasons why a kid is running away. If you force the child back home, they could then distrust CPS even more, so they won't ask for help because no one believes them. This will prompt them to run away again – it is a cycle*."

I also wish to draw attention to the definition of 'child' in the *Child, Youth and Family Services Act*: "'*child*' *means a person who is under 18 years of age*" (clause 1(b)). The proposed amendments (section 28.1) identify a '*child*' as the subject of these actions. Yet, there do not appear to be any differing

considerations for younger children, and for those youth 16 to 18 years of age, having regard to the growing agency and maturity of children and youth.

With regards to the proposed clause 28.1(1)(b), there is no clear articulation of the process for the determination of endangerment ("*reasonable grounds to believe that …the child's safety or well-being is likely to be endangered*") and the evidence used to assess this issue. In situations where there is no active Child Protection case, the Director or police officer may rely on inaccurate declarations about safety and well-being that have not been fully assessed. There doesn't appear to be any clear opportunity for children and youth themselves to present evidence and have their voice heard in the decision-making process.

The Office's Child and Youth Advisory Committee has nicely summed up the balance to be accorded to Bill No. 103, when considering both the likely positive and potentially more severe unintended negative impacts upon children and youth, as follows:

> "*There is more bad to this change than good.*
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> *… It seems like the law might work with less serious situations. It might help sometimes, but the majority of time when children run away from home, it is a serious reason*."

Lastly and for the record, I would welcome, and am agreeable to, any interested MLA tabling in the Legislature this letter and attached Legislation Feedback Survey Response from the Child and Youth Advisory Committee, as part of any discussion/debate regarding the merits of enacting Bill No. 103.

Respectfully,

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Child and Youth Advocate/PEI
Office of the Child and Youth Advocate

cc: Hon. Barb Ramsay, Minister of Social Development and Seniors
MLA Perry
MLA Simpson
MLA Bernard