



28 April 2026

Hon. Robert Lantz

Hon. Hal Perry

Matthew MacFarlane

P.O. Box 2000

Charlottetown, PE C1A 7N8

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

Re: Response from the Office of the Child and Youth Advocate (OCYA) to Bill No. 26, *An Act to Amend the Child, Youth and Family Services Act (No.2)*

I understand that Bill No. 26, *An Act to Amend the Child, Youth and Family Services Act (No. 2)* 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. 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.

The safety of Island children and youth is of utmost concern, and I applaud the actions taken by the Department of Social Development and Seniors in tabling amendments, during this Spring session of the Legislature, that aim to strengthen the mandatory duty to report concerns where the safety or well-being of a child is endangered. I wish to acknowledge, from the outset, my appreciation for the ongoing collaboration with my Office and the commitment shown by the Department of Social Development and Seniors in working together to advance outcomes that will enhance the rights, safety and well-being of children and youth in PEI. It is imperative to have amendments enacted quickly that will remedy the

confusion regarding the duty to report occasioned by the Jenkins Report. Otherwise, Island children and youth will, no doubt, be placed in harm's way.

As Child and Youth Advocate for PEI I have a statutory duty, pursuant to the *Child and Youth Advocate Act*, to represent the rights, interests and well-being of Island children and youth receiving or eligible to receive programs and services by statutorily defined reviewable services. In exercising my legislative authority, I put forth a recommendation to the Department of Social Development and Seniors in February 2026 to introduce an amendment to the *Child, Youth and Family Services Act*:

“That the Department of Social Development and Seniors introduce legislation for enactment in the 2026 Spring Session of the Legislature to amend the definition of “child in need of protection” in section 3 of the PEI Child, Youth and Family Services Act by substituting the phrase “the person having care, custody, control or charge of the child” for the existing language of ‘a parent’.”

This recommendation emanated from the [OCYA Position Statement in Response to Commissioner Jenkins’ Report regarding Student Safety in Island Schools - Handling of Complaints and Incidents of Staff Sexual Misconduct, Report to the Minister of Education and Early Years](#). In this publication, I acknowledged the comments made by Commissioner Jenkins regarding the mandatory duty to report. As it currently stands, section 12 (1) of the *Child, Youth and Family Services Act* provides a statutory duty to report when a person has reasonable grounds to suspect that a “*child is in need of protection*”. Section 3 of the legislation defines a child in need of protection in circumstances where the harm suffered by a child is inflicted or permitted by a **parent**. “Parent”, in turn, is a defined and layered term in s. 1(l) of the *Child, Youth and Family Services Act*, which also sets out specific exclusions. Unfortunately, the legislation has created a gap that may prevent disclosures to Child Protection Services or the police when the harm is carried out or permitted by a person other than a parent. I have asserted the need for greater strengthening of the statutory duty, to resolve any ambiguity.

My Office has found that there are many reasons why individuals do not report to Child Protection Services. Legislative barriers that may unintentionally create confusion around the duty to report must be removed to avoid putting children at further risk of harm. The duty to report must be crystal clear as having universal application. Service providers working in Child Protection Services have a depth of expertise and are best placed to receive reports concerning the endangerment of children and youth. There should be no impediment to reporting, to enable Child Protection Services to do their critically important work in assessing risks and identifying appropriate services to ensure the safety and wellbeing of children and youth. As I highlighted in the OCYA [May 2025 Position Statement](#) and [September 2025 Presentation to the Standing Committee](#), it is not the role of individuals to verify criminal intent on the part of the alleged perpetrator, and the laying of criminal charges is not a precondition for a report to be made to Child Protection Services or the police. The bar is low for reporting, as it should be to maximize the potential for children and youth to be protected from harm.

The amendments put forward in Bill No 26 do not address the definition of a child in need of protection (section 3), as highlighted in the recommendation from my Office. However, the spirit of the recommendation has been met with a committed and accelerated effort by the Department of Social Development and Seniors to expand and clarify the statutory duty to report. The amendments to section 12 (1) and (2) of the *Child, Youth and Family Services Act* remove the requirement for the child to be in need of protection, as defined in section 3. This is replaced with a duty to report when a person “*has knowledge, or reasonable grounds to suspect, that the **safety or well-being of the child is endangered.***” This amendment creates the legislative pathway for **all** reports of harm to children to be made to Child Protection Services.

Additional amendments to section 13, proposed in Bill 26, secure the mandate of Child Protection Services to assess reports made where the safety or well-being of a child may be endangered, and awards increased authority to the Director of Child Protection to contact and seek information from sources beyond a parent. These amendments serve to better protect children and youth and recognize the fundamental role of Child Protection Services in assessing reports and gathering required information in order to determine appropriate protective steps.

It is imperative that policy and practices directed to the safety and well-being of children and youth are aligned with any forthcoming legislated amendments to the *Child, Youth and Family Services Act*. Should these amendments in Bill 26 receive Royal Assent, updates to documents including the Provincial Child Sexual Abuse Protocol and the education authorities’ Sexual Misconduct Policy (as per section 21.1 of the *Education Act*) will need to be confirmed to ensure consistency across legislation and policy, clarifying the statutory duty to report. Service providers working directly with children, youth and families are entitled to clear, strong guidance regarding their duty to report.

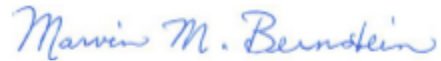
Whilst I welcome and support in the short-term the clarity provided by amendments set out in Bill No. 26, and in particular the amendment to section 12 that expands the statutory duty to report, I have also requested that the Department of Social Development and Seniors conduct a fulsome jurisdictional scan of legislation and related practices, and in particular a scan of those jurisdictions where the definition of ‘child in need of protection’ is not linked to a ‘parent’. A thorough jurisdictional scan, prior to the next session of the Legislature, will enable Child Protection Services to identify any need for further corrective amendments that may provide greater protection for Island children and youth.

Protecting Island children and youth is incumbent upon every individual and Bill No. 26 provides a timely reminder that every person has a statutory duty to report to Child Protection Services or the police when they have knowledge, or reasonable grounds to suspect, that the safety or well-being of a child is endangered. PEI is indeed fortunate to have access to significant expertise within Child Protection Services, and to do their important work in protecting Island children and youth, they depend on robust reporting of concerns regarding the safety and well-being of children. Bill No. 26 provides an important

step forward in reducing ambiguity regarding statutory reporting, thereby enhancing the protection rights of children and youth.

Lastly and for the record, I would welcome, and am agreeable to, any interested MLA tabling in the Legislature this letter as part of any discussion/debate regarding the merits of enacting Bill No. 26, *An Act to Amend the Child, Youth and Family Services Act (No. 2)*.

Respectfully,



Marvin M. Bernstein, B.A., J.D., LL.M (ADR)
Child and Youth Advocate/PEI
Office of the Child and Youth Advocate

cc: Hon. Barb Ramsay, Minister of Social Development and Seniors
MLA Carolyn Simpson, Member of the Official Opposition
MLA Karla Bernard, Member of the Third Party