



February 13, 2023

The Honourable Marco E. L. Mendicino
Minister of Public Safety
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Minister Mendicino:

Re: *Criminal Records Act* – Vulnerable Sector Checks

I write to you as an independent officer of the PEI Legislative Assembly, appointed as the Child and Youth Advocate pursuant to the PEI *Child and Youth Advocate Act*, with regard to proposed provincial amendments to the PEI *Early Learning and Child Care Act and Regulations*, and to the Royal Canadian Mounted Police (RCMP) interpretation of the federal *Criminal Records Act* specific to Vulnerable Sector Checks. The purpose of my correspondence is to request the following actions for your consideration:

- Interceding with the RCMP and directing them to apply a more liberal and child-centred interpretation of the *Criminal Records Act* specific to vulnerable records check requirements for all persons employed or volunteering with early learning and childcare centres; and
- Applying a Child Rights Impact Assessment (CRIA) to the relevant provisions of the *Criminal Records Act*, having regard to the United Nations Convention on the Child (UNCRC) articles that are potentially impacted and identified in the linked submission, and the tools being developed by the federal Department of Justice.

It seems that most individuals would like to see vulnerable sector checks used in early learning and childcare settings, and in my view, there are simpler solutions than lowering the protective safeguards for young children by amending legislation or regulations. Such options would include: employers providing more details as to the fluidity of roles in job descriptions; employers providing more details as to the fluidity of roles in vulnerable sector requisition letters; and the province providing direction to local police forces to adopt a uniform child-centred approach to requests for vulnerable sector checks. Having said that, the issue of the RCMP approach to carrying out vulnerable checks is an outstanding issue that, in my submission, requires immediate attention.

I am concerned about the debate focusing on accommodating the bureaucratic positions of other adult participants and mitigating the inconvenience to the adults who may be employed or volunteering in early learning and childcare centres, rather than focusing on protecting young children from all forms of harm, including risks posed by employees or volunteers, who may be using digital means, such as texting and social media, as well as having access to the records of children in those facilities.

As I wrote to all three political parties at an earlier time:

“The elimination of vulnerable sector checks in early learning and childcare centres would, in my view, compromise the safety, protection and well-being of children.

Staffing roles are fluid when it comes to the shifting needs of young children and there may be an urgent need for a staff person to step in and support and care for a young child.

It is a slippery slope when protections for young children are chipped away and eliminated for our youngest and most vulnerable citizens.”

On January 31, 2023, upon invitation, I appeared before the PEI Legislative Assembly Standing Committee on Education and Economic Growth to speak to Motion 131 regarding proposed Bill No. 129, *An Act to Amend the Early Learning and Childcare Act (No.2)*. In my written submission to the Standing Committee, I identified relevant articles of the United Nations Convention on the Rights of the Child impacted by both provincial and federal legislation. A copy of my submission is available on our Office’s website at:

https://www.childandyouthadvocatepei.ca/sites/www.childandyouthadvocatepei.ca/files/FINAL%20Vulnerable%20Sector%20Check_presentation_Dec_30_2022_%20mmb%20-%20ph%20Jan%2030.pdf

In preparing for my presentation to the PEI Legislature Standing Committee, I consulted with my colleague members of the Canadian Council of Child and Youth Advocates only to learn that the issue of police completing vulnerable sector checks for persons employed or volunteering in early learning and childcare centres in other Canadian jurisdictions has not been identified as problematic. It appears the issue is isolated to Prince Edward Island with the RCMP appearing to apply a narrow interpretation of the *Criminal Records Act*. I next reviewed the relevant legislation and regulations from other Canadian jurisdictions and could not find evidence of any softening of vulnerable sector check requirements in the case of early learning and childcare centres. I further sought an external legal opinion which highlights that there appears to be no caselaw interpreting the meaning of “*the position of one of trust or authority towards that child or vulnerable person*” as set out in the federal *Criminal Records Act*. As noted in my submission, this means that there is room for discretion, and the paramount concern should be protecting young vulnerable children in early learning and childcare centres from risk of harm.

Protection of our youngest citizenry while attending early learning and childcare centres is a shared responsibility and legislation, at all levels of government, must strengthen and not weaken the existing vulnerable sector search protections for children, having regard to the potential risk to children of both personal and digital contact, whether frequent or situational, by persons providing services or having access to children’s records.

The UNCRC, ratified by Canada in 1991, requires all levels of government to consider potential impacts on children’s rights, intentional and unintentional, direct and indirect, short-term and long-term, in all legislation, regulations, policies, programs and practices. This is where a CRIA can be beneficial.

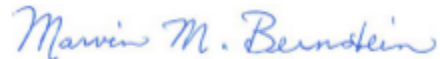
In my above-noted submission, I have referenced various articles of the UNCRC wherein child rights in relation to Vulnerable Sector Checks have direct relevance to the obligation of all levels of government

to ensure the health, safety and well-being of young children attending early learning and childcare centres.

It is my understanding that the Federal Department of Justice is currently in the process of completing development of a CRIA assessment tool and related training modules. I would ask that you consider directing that this CRIA tool be applied to the relevant provisions of the *Criminal Records Act* in relation to Vulnerable Sector Checks so as to delineate the UNCRC articles specific to persons employed or volunteering with early learning and childcare centres.

In closing, every child has a human right to protection from abuse and exploitation and all levels of government have a duty of care to take appropriate measures to ensure the protection, health and well-being of our youngest and most vulnerable citizens. Any erosion of preventative measures to keep children safe in their early learning and childcare environments is a step backwards and a substantive retrogression in the advancement of children's rights in this province and in this country. We need to get this right – our children are depending upon us, along with their parents and guardians, who trust that all protective measures have been taken to ensure the safety of their infants, toddlers and young children when attending early learning and childcare centres.

Sincerely,



Marvin M. Bernstein, B.A., J.D., LL.M. (ADR)
Child and Youth Advocate

cc: Minister David Lametti – Minister of Justice and Attorney General of Canada
Minister Darlene Compton – Justice and Public Safety and Attorney General/PEI
Deputy Minister Jonah Clements – Justice and Public Safety/PEI
Minister Natalie Jameson – Education and Lifelong Learning/PEI
Deputy Minister Bethany MacLeod – Education and Lifelong Learning/PEI
Zack Bell, MLA, Chair – Standing Committee on Education and Economic Growth/PEI Legislature
Alysha MacEachern, Clerk – Standing Committee on Education and Economic Growth/PEI
Legislature