



February 28, 2023

Hon. Lawrence MacAulay
Mr. Sean Casey
Mr. Heath MacDonald
Mr. Robert Morrissey
House of Commons
Ottawa, Ontario,
Canada K1A 0A6

Dear Members of Parliament,

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.

This correspondence draws from and expands upon my earlier letter (attached) to the Honourable Marco E.L. Mendicino, dated February 13th, 2023, and copied to the Honourable David Lametti, Minister of Justice and Attorney General of Canada, among others.

The purpose of my correspondence is to request the following actions for your individual and collective consideration:

- Advising and recommending that the Federal Minister of Public Safety intercede with the RCMP and direct 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. In this regard, section 12 of the federal *Interpretation Act* states that “*Every enactment is deemed to be remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.*”; and
- Advising and recommending that the Federal Minister of Public Safety and the Federal Minister of Justice apply 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 our Office’s written submission to the Standing Committee on Education and Economic Growth, dated January 30th, 2023, and the tools being developed by the federal Department of Justice.

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). A copy of that letter of invitation, dated January 18th, 2023, and the referenced Motion and Bill are attached, as well as our Office's written submission to the Standing Committee on Education and Economic Growth, dated January 30th, 2023.

As mentioned in my earlier letter, 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 written 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.

Given your current roles as federal Members of Parliament representing the interests of Islanders across the entire province, I thought you may wish to support my advocacy in having a uniform approach across the country to the processing of vulnerable sector checks and not having a singular more restrictive approach to vulnerable sector checks applying in PEI., thereby leaving infants, toddlers and young children at risk of harm through either in person contact by employees and volunteers of early learning and childcare centres, or through remote digital contact, or by their having access to children's records located at the centre.

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. I appreciate any assistance you can render in this matter.

Sincerely,



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

cc: Hon. Marco Mendicino, Minister of Public Safety, Government of Canada
Hon. David Lametti, Minister of Justice and Attorney General of Canada
Hon. Dennis King, Premier, Province of Prince Edward Island
Hon. Peter Bevan-Baker
MLA Sonny Gallant
Zack Bell, MLA, Chair – Standing Committee on Education and Economic Growth/PEI Legislature
Alysha MacEachern, Clerk – PEI Legislative Standing Committee on Education and Economic Growth/PEI Legislature