

NOTICE OF UNCONSTITUTIONALITY AND REQUEST FOR REMEDY

TO: All Members of the Legislative Assembly of Nova Scotia

FROM: Tara Ibrahim, Board Member/ Citizens' Alliance of Nova Scotia

DATE: April 8, 2026

RE: Bill 201 – Constitutional Invalidity Under Section 52 of the Constitution Act, 1982 and Violations of the Canadian Charter of Rights and Freedoms

Honourable Members,

We write to formally notify each of you that Bill 201, the Justice and Social Services Act (the “Bill”), is unconstitutional and, pursuant to section 52 of the Constitution Act, 1982, is of no force or effect to the extent of its inconsistency with the Constitution of Canada. The Bill violates the separation of powers, the rule of law, democratic accountability, and multiple Charter rights. These defects cannot be saved by section 1 of the Charter.

We request that the Assembly immediately withdraw or substantially amend the Bill to comply with the Constitution. Every Member has a sworn duty to uphold the Constitution, including section 52.

1. Section 52 of the Constitution Act, 1982 – Paramountcy of the Constitution

Section 52(1) of the Constitution Act, 1982 declares:

“The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.”

Any provision of Bill 201 that infringes the constitutional separation of powers, the rule of law, or the Canadian Charter of Rights and Freedoms is automatically void under section 52. The courts have consistently applied section 52 to strike down legislation that trenches upon core judicial functions or unjustifiably limits Charter rights. This Notice sets out the specific inconsistencies.

2. Unconstitutional Interference with Judicial Function (Separation of Powers) – Clauses 8 and 9

Clauses 8 and 9 remove from the superior courts their historic and constitutionally protected authority to determine when a publication ban relating to a child in the child-protection system should be lifted, even after the child’s death and even when lifting the ban would serve the child’s best interests or the administration of justice.

Instead, the Bill vests that discretion exclusively in the Minister who oversees the very system under scrutiny.

This constitutes an impermissible legislative encroachment on the core judicial function of the superior courts, contrary to the separation of powers and section 96 of the Constitution Act, 1867. As the Supreme Court held in *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3, judicial independence is a fundamental constitutional principle. In *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, the Court affirmed that courts possess the power to supervise ongoing compliance, including the authority to modify confidentiality orders. Most recently, *Canada (Attorney General) v. Power*, 2024 SCC 26 at paras. 48-52, confirmed that the legislature cannot reassign core judicial functions to the executive.

Because Clauses 8 and 9 violate section 96 and the separation of powers, they are inconsistent with the Constitution and of no force or effect under section 52.

3. Violation of the Rule of Law and Democratic Accountability – Clauses 7, 8-9, and 12-15

The Bill undermines the rule of law and democratic accountability:

- a. Clauses 8-9 – Granting the Minister sole authority to lift publication bans creates an inherent conflict of interest (the Minister is responsible for the system subject to scrutiny). This insulates the executive from judicial and public accountability, violating the rule of law principle that no one may be a judge in their own cause.
- b. Clause 7 – Registering individuals who receive an absolute or conditional discharge (not a conviction) on the Child Abuse Register imposes stigma and barriers without full procedural protections, exceeding what is reasonably necessary.
- c. Clauses 12-15 – Repealing the independent Social Workers Act and subordinating the profession to a health-regulation model, even in non-clinical roles, chills professional advocacy. As the Nova Scotia College of Social Workers has stated, the new framework gives the Minister authority to intervene in the college's operations whenever the government considers it "in the public interest," effectively converting an independent regulator into a department of government. This erodes the independent oversight essential to democratic accountability.

Taken together, these provisions frustrate open, transparent public discourse and prevent the informed public inquiry called for in the Petition mentioned in the house by MLA McCrossin on March 26. They are inconsistent with the constitutional principle of the rule of law and therefore void under section 52.

4. Violation of Charter Rights – Clauses 7, 8-9, and 12-15

The following Charter rights are infringed, and the infringements are not saved by section 1:

- a. Section 2(b) – Freedom of Expression

Clauses 8-9 impose a blanket, perpetual restriction on public discourse, media reporting, and families' ability to speak about their experiences – even

non-identifying accounts – concerning the child-protection system. The ban continues indefinitely after a child’s death without any judicial assessment. This violates *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, and *Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, which require a strong presumption in favour of open courts and carefully tailored bans.

b. Section 7 – Right to Life, Liberty and Security of the Person

By preventing scrutiny of systemic failures, the Bill directly interferes with the security of the person of children in care and their families. The ability to identify and publicize systemic problems is essential to preventing future harms. As held in *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46, state action in the child-protection context engages section 7 and must be accompanied by adequate procedural protections. This Bill does the opposite – it silences critics.

c. Section 15(1) – Equal Protection and Equal Benefit of the Law

Clauses 8-9 create a distinct and disadvantaged class: children who die while in provincial care are treated differently from all other deceased persons. For every other individual, families and the media may speak about that person’s life and the circumstances of death, subject only to generally applicable privacy laws. Under the Bill, children who die in care are subjected to a perpetual, judge-proof publication ban. This perpetuates disadvantage for an already vulnerable group and cannot be justified under section 1.

5. Violation of Liberty and Equality Rights – Clauses 5 and 9

Clause 5 extends ministerial discretion to provide services to young adults aged 19-25 who have aged out of care, creating a parallel Minister-controlled track that risks perpetuating unnecessary state supervision and dependency into adulthood.

The following statement, echoed by youth advocates and experts, captures the core constitutional harm:

“Extending government care without guaranteed services does not empower youth; it sets them up to fail by prolonging dependency in a system that has already proven it cannot meet their needs.”

This Bill violates:

- a. Section 7 (liberty) – Personal autonomy and freedom from arbitrary state interference are engaged when the state keeps young adults under discretionary ministerial control rather than providing neutral social services available to all other adults. The provision is overbroad and arbitrary (*Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844).

- b. Section 15(1) (equality) – Differential treatment based on age and the analogous ground of “*former child-in-care status*” creates a second-class category of young adults who are denied the full autonomy and equal access to services that others enjoy.

Because Clause 5 arbitrarily prolongs dependency without guaranteed services, it is inconsistent with sections 7 and 15 of the Charter and is of no force or effect under section 52.

6. The Infringements Are Not Saved by Section 1 of the Charter

All of the above Charter violations fail the Oakes test. The Bill’s provisions are not “*minimally impairing*” and fail the proportionality analysis established in *Dagenais* and *Toronto Star Newspapers Ltd.*. A blanket, perpetual publication ban that removes all judicial oversight is a far more intrusive measure than necessary. The availability of case-by-case judicial determinations demonstrates that the Bill’s extreme measures are not rationally connected to its stated goals and do not minimally impair Charter rights.

7. Overall Undermining of Transparency and Independent Oversight

Taken together, the Bill’s provisions insulate the executive branch from scrutiny, create inherent conflicts of interest, and remove independent regulatory and judicial safeguards. This is the opposite of what is required in a system that depends on the rule of law, democratic accountability, and the protection of vulnerable children. By silencing critics, preventing public discourse, and concentrating unchecked discretion in the Minister, the Bill undermines the very foundations of constitutional governance.

Under section 52 of the Constitution Act, 1982, any law inconsistent with the Constitution is void. Bill 201 is inconsistent in multiple, fundamental respects.

Request for Immediate Action

We urge each Member of the Legislative Assembly to:

1. Publicly acknowledge that Bill 201, in its current form, is inconsistent with the Constitution and therefore of no force or effect under section 52.
2. Withhold support and vote against the Bill unless the following amendments are made:
 - a. Restoration of judicial discretion to impose and lift publication bans (clauses 8-9).
 - b. Removal of the Minister’s sole discretion to lift publication bans.
 - c. Amendment of clause 7 to exclude absolute and conditional discharges from mandatory registration, or provision of a full, independent review mechanism.
 - d. Restoration of the independent Social Workers Act or, at a minimum, amendment of clauses 12-15 to ensure social workers can advocate freely on matters of public policy.

- e. Amendment of clause 5 to guarantee mandatory, rights-based services for young adults who have aged out of care, on the same footing as all other adults, rather than discretionary, unguaranteed support. The quoted statement must be heeded:

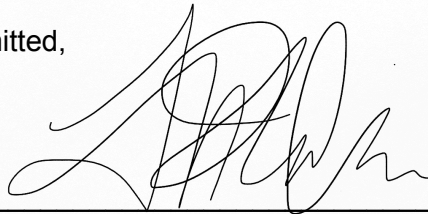
“Extending government care without guaranteed services does not empower youth; it sets them up to fail by prolonging dependency in a system that has already proven it cannot meet their needs.”

3. Seek an independent legal opinion on the Bill’s constitutional validity and make that opinion public.

Failure to address these constitutional defects will invite immediate legal challenge under section 52. The Supreme Court’s decision in *Canada (Attorney General) v. Power* confirms that the state can be held liable for enacting unconstitutional legislation. Nova Scotians – and especially the vulnerable children, youth, and families who depend on a fair and accountable child-protection system – deserve better than a law that silences scrutiny and concentrates power in the hands of the very Minister whose actions need to be examined.

We respectfully request that this Notice be read into the public record of the House of Assembly and that each Member respond in writing, within 30 days, confirming whether they will support the necessary remedies.

Respectfully submitted,



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cc: Speaker of the House of Assembly
cc: Premier of Nova Scotia
cc: Minister of Opportunities and Social Development
cc: Nova Scotia College of Social Workers
cc: Canadian Broadcasting Corporation
cc: Canadian Media Lawyers Association
cc: Media outlets

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