



CASW Position Statement on Section 43 of the Criminal Code

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Section 43 of the Criminal Code states that “Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances”, providing parents, teachers, or guardians with an explicit defence, allowing them to use force against a child.

As an organization and a profession that upholds the dignity and worth of all persons, the Canadian Association of Social Workers (CASW) strongly condemns the notion that there is any ‘reasonable’ force to use against a child. Research has shown that corporal punishment is not a physically or psychologically safe, or effective, method of discipline.

There have been 12 bills introduced in previous parliamentary sessions with the goal of repealing section 43. Currently, Private Member’s Bill C-273, An Act to amend the Criminal Code (Corinne’s Quest and the protection of children), sponsored by Peter Julian, NDP MP for New Westminster—Burnaby, British Columbia and Senate Public Bill S-251, An Act to repeal section 43 of the Criminal Code (Truth and Reconciliation Commission of Canada's call to action number 6), sponsored by Senator Stan Kutcher, are also striving towards that common goal.

Background on Section 43 of the Criminal Code

The defence of “lawful correction” or “reasonable chastisement” appeared in Canada’s first Criminal Code in 1892. The content has remained virtually unchanged since that time, except for the removal of certain relationships previously covered by the defence (Barnett & Mason, 2023).

In 1984, the Law Reform Commission of Canada recommended the repeal of section 43 as a defence for teachers. The majority of the Commission suggested leaving section 43 in place for parents to prevent criminal charges for every instance of corporal punishment, such as spanking.

The Supreme Court of Canada in its 2004 decision of *Canadian Foundation for Children, Youth and the Law v. Canada*, found that section 43 is consistent with the Canadian Charter of Rights and Freedoms, as they agreed, at the time, that it did not infringe on a child’s rights to security of the person (section 7) or a child’s right to equality (section 15), and did not constitute cruel and unusual treatment or punishment (section 12) so long as it is used as a defence in specific conditions. Those conditions are as follows:

- That the use of force must be sober and reasoned, must be addressing actual behaviour and is intended to restrain, control or express symbolic disapproval.
- That the child has the capacity to understand and benefit from the correction.
- Only on children aged two to 12.
- May not involve the use of objects (belts, rulers, etc.).
- May not be applied to the head.
- That teachers may only use it to forcibly remove a child from the classroom or secure compliance with instruction.

CASW strongly believes the above criteria are not only outdated, but deeply flawed: no child, especially not a toddler as young as two years old, has the capacity to benefit from a violent correction whether or not belts are permitted, or whether or not this punishment can be applied to the head.

In 2007, the Standing Senate Committee on Human Rights recommended the repeal of section 43. The committee’s report highlighted the need for a public education campaign on the negative effects of corporal punishment. The committee also recommended that the Department of Health undertake research on the different methods of discipline and the effects of corporal punishment on children. In 2012 the United Nations Committee on the Rights of the Child also recommended that Canada repeal section 43.

Most recently, in 2015, Prime Minister Justin Trudeau committed to implementing the 94 Calls to Action made by the Truth and Reconciliation Commission of Canada, number six being the repeal of section 43.

Since the Supreme Court of Canada’s decision almost 20 years ago, evolving research and information on the harms associated with the physical discipline of children has resulted in increased calls for the repeal or reform of section 43. The use of physical punishment on children

has been shown to increase the risk of broad and lasting negative developmental effects (Durrant & Ensom, 2012).

Comparison of Jurisdictions

Legislation regarding the physical punishment of children varies within Canada from province to province. Some provinces and territories have banned the use of corporal punishment in foster care, childcare facilities and in school settings. If section 43 were to be repealed, any provincial or territorial law that remained inconsistent would yield to the federal statute.

Sweden was the first country to ban corporal punishment in 1979. Since then, 65 countries have banned all corporal punishment of children, including in the home. Countries prohibiting the use of corporal punishment have lower rates and faster reductions in the use of corporal punishment as well as a shift in parental attitudes towards corporal punishment (Carmel & Kutcher, 2024).

In 1983, Finland became the second country, after Sweden, to adopt a law prohibiting corporal punishment on children by their parents. After 28 years, Finland conducted a study in Western Finland to examine the outcomes of the ban. The researchers concluded that "a decline in physical punishment of children does not occur automatically but that the implementation of a law is necessary" because they discovered that there was a significant decline in the use of corporal punishment only after the law had been passed and not in the years prior to the ban (Freer, 2020).

By repealing section 43 of the Criminal Code, Canada would become the 66th country to ban the use of physical punishment on children, joining its allies, countries like Sweden, New Zealand, Germany, France, Scotland, and many others.

The Complexity of the Issue

When considering corporal punishment of children, it is important to appreciate the complexity of the issue at hand.

Normative discipline practices vary depending on the culture that the child is brought up in. For instance, the use of physical discipline is perceived as normative in some cultures and not others. (Lansford, et al., 2005). As Canada has a large variety of cultures represented in its demographic, what may be viewed as normal and common in one household may not be taken as the same standard in others.

The goal of repealing section 43 is to emphasize that child rights are paramount and exceed the rights of adults using physical force and should not be used as an excuse to deepen surveillance of already overpoliced populations.

To ensure that the complete repeal of section 43 is done prudently, the protection of populations overrepresented in the criminal justice and child welfare systems is vital. Indigenous Peoples and Black People are highly overrepresented in Canada's criminal justice system (Department of Justice Canada, 2019 & 2022). Further, knowing its often close interplay with the judicial system, it is deeply important to recognize and prevent a potential impact of repealing section 43 on child welfare systems in Canada. As with the judicial system, Indigenous and Black families are egregiously overrepresented in the child welfare system and already over surveilled.

To avoid oversurveillance of equity-denied groups, the repeal of section 43 must be done in tandem with the emergence of programs that provide education on systemic racism. If the repeal is done in conjunction with additional resources and awareness, it could help further Canada's progress on reconciliation. As Call to Action number six from the Truth and Reconciliation Commission, the repeal of section 43 is an essential step in advancing the priorities of Indigenous communities. It is important to note that this Call to Action was supported by documented evidence of widespread corporal punishment and abuse of children by staff in the residential school system.

It must also be accompanied by fully funded, federal monitoring and data collection measures: this will provide some oversight and tracking in terms of potential unintended impacts on any group and help. Further, this data must be made publicly available on an immediate and ongoing basis

CASW further recommends that a repeal of section 43 be accompanied by public education campaigns focused on the research regarding the harms of corporal punishment.

Finally, it is important to appreciate that this is a nuanced issue. While parents, caregivers/guardians, and teachers may indeed be required to restrain or redirect a child that is not acting safely toward themselves or others, this is a separate situation, and we recommend that the federal government address this distinction in any new legislation. The "de minimis" defence in Canadian law can also be an important mitigating and protective factor: The defence of de minimus is an alternative common law defence that precludes punishment for a trivial or technical violation of the law" (Barnett & Mason, 2023). In short, this defence dismisses cases or claims where the issues at hand are deemed too insignificant to warrant judicial attention and should be employed to ensure matters of reasonable correction of a child, especially within certain cultural contexts, are not pursued.

That said, there should not be a section of the Criminal Code that justifies use of force by an adult against a child – especially not when each individual has the power to determine 'reasonable force' for themselves.

CASW's Position on Section 43

The Canadian Association of Social Workers (CASW) supports the repeal of section 43 of the Criminal Code, which justifies the use of reasonable force for the correction of children by teachers, parents, or guardians. This section perpetuates outdated notions that corporal punishment is necessary for discipline and education, contradicting CASW's values and principles. Studies show the detrimental effects of the use of corporal punishment on children and their development. The use of force against children of any age is not acceptable in Canada.

Finally, it must be noted that the fulsome implementation of all the Truth and Reconciliation Commission's Calls to Action and the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls' Calls for Justice must be fully implemented to begin to address the deep-rooted issues in both child protection and justice systems in Canada. Without these, no changes to the Criminal Code or to the system more broadly in the intent of creating a better Canada will fully meet their goals.

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