

The Canadian Teachers' Federation Submission for the Standing Committee on Justice and Human Rights' Study of Bill C-273

February 2024

Executive Summary

The Canadian Teachers' Federation (CTF/FCE) is a national organization comprised of 18 Member and Associate Organizations that represent over 365,000 public school teachers in Canada from every province and territory. As a federation of teacher organizations, the CTF/FCE promotes and supports quality inclusive publicly funded public education, in all its forms. We uphold teaching as a profession and advocate for adequate resourcing, labour rights, and social justice, across Canada and around the world.

The CTF/FCE has a long-standing policy opposing corporal punishment and fully supports the Government of Canada's commitment to enact all the Truth and Reconciliation Commission of Canada's Calls to Action. At the same time, the CTF/FCE wants to ensure that no unintended harm is caused through the process, which is the case with the potential repeal of Section 43.

If Section 43 is repealed without other amendments to the *Criminal Code* that ensure teachers may intervene physically when necessary to protect students and, in some cases, themselves, teachers will not be able to maintain safety and security in schools. In other words, there are unintended negative consequences of repeal without replacement language.

School Safety Amendment

The CTF/FCE is calling on the Standing Committee on Justice and Human Rights to review the CTF/FCE's concerns regarding Bill C-273 and to strongly consider an amendment to the legislation to ensure the specific protection of teachers and education staff within the Criminal Code for cases where reasonable physical intervention is necessary for the safety and well-being of students, teachers, and education workers in K-12 classes across the country.

The CTF/FCE has drafted language with legal counsel aimed at providing protection for teachers and students while respecting the TRC Call to Action to repeal Section 43. Given the above, the draft language we are providing seeks to amend Section 265 of the Criminal Code of Canada. That said, we note the importance of parliamentary procedure and the permissibility of amendments as decided by the Committee Chair, Clerk, and Speaker of the House and implore all parties to include the below language or similar language in the Criminal Code - where you deem best - to keep students, teachers and classrooms safe in any way necessary to both follow proper procedure and satisfy the sentiment of the amendment:

265 (5) This section does not apply to a teacher or other education worker who applies force that is reasonable in the circumstances towards a child that is under their direct or indirect supervision relating to the following purposes:

(a) protecting the safety of the child; or

(b) preventing the child from causing bodily or emotional harm to themselves or to other persons.

(6) For the purposes of subsection (5), “force that is reasonable in the circumstances” means force of a transitory or trifling nature.

(7) For the purposes of paragraph (5)(b), “other persons” includes other students, the teacher or other education worker applying force, and other individuals.

The CTF/FCE has consulted with its 18 Member and Associate Organizations to seek examples where Section 43 was or could have been applied in the defense of a teacher or education worker (under the guidance of their respective legal counsel) and have found there are at least 56 known scenarios since 2004, from seven teacher unions representing members in five provinces or territories where Section 43 can apply to the defense of a teacher.

The CTF/FCE and its Member and Associate Organizations take seriously the responsibility of teachers and educators to do all they can to ensure schools are safe spaces for all children and youth and we reiterate our long-standing policy against corporal punishment. With the very best interests of students and educators in mind, we believe that having a provision for teachers in the Criminal Code would provide important protection, safety, and peace of mind for families, students, teachers and education workers. We are concerned by the very real possibility, that repeal of Section 43 without an appropriate amendment elsewhere in the Criminal Code, will lead to schools becoming more unsafe at a time when we are seeing increased violence in classrooms throughout Canada.

The CTF/FCE Position on the Matter of Teacher Protection in the *Criminal Code*

The CTF/FCE is calling on the Government of Canada to:

1. Ensure the continued protection of teachers and students in their care whilst respecting the Truth and Reconciliation Commission’s (TRC) Calls to Action.
2. Amend Bill C-273 to ensure that language specifically protecting students and teachers is present elsewhere in the Criminal Code in a way that is permissible with parliamentary procedure as decided by the Committee Chair, Clerk, Speaker of the House and all other necessary parties involved. An example of said language would be an amendment to **section 265 of the Criminal Code of Canada similar to what follows:**

265 (5) This section does not apply to a teacher or other education worker who applies force that is reasonable in the circumstances towards a child that is under their direct or indirect supervision relating to the following purposes:

(a) protecting the safety of the child; or

(b) preventing the child from causing bodily or emotional harm to themselves or to other persons.

(6) For the purposes of subsection (5), “force that is reasonable in the circumstances” means force of a transitory or trifling nature.

(7) For the purposes of paragraph (5)(b), “other persons” includes other students, the teacher or other education worker applying force, and other individuals.

Key Considerations

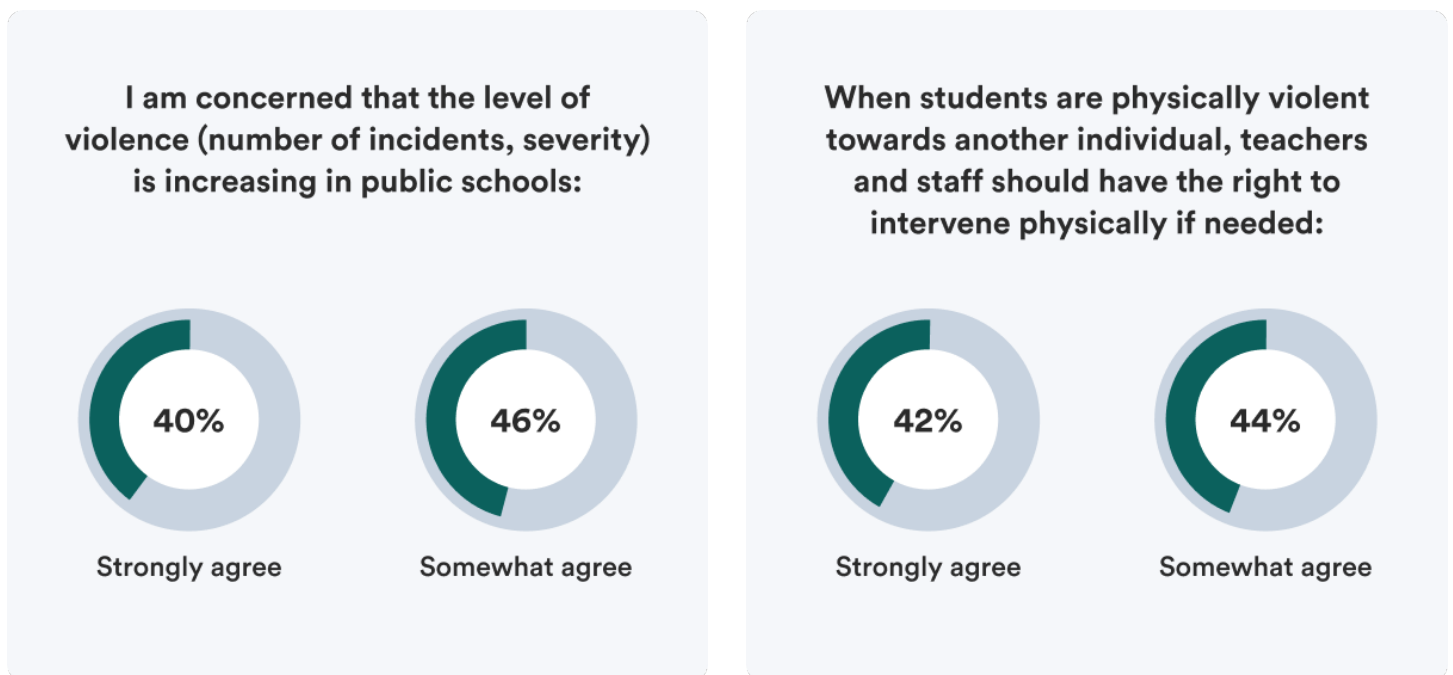
1. The CTF/FCE supports the Government’s commitment to enact all the Calls to Action of the TRC and has a long-standing policy opposing corporal punishment.
2. If, however, Section 43 is repealed without amendments to the *Criminal Code* that ensure teachers may intervene physically when necessary to protect students and, in some cases, themselves, teachers will not be able to maintain safety and security in classrooms. In other words, there are unintended negative consequences of repeal without replacement language.
3. Examples of appropriate actions, for the safety and well-being of all, that a teacher might not take if Section 43 is repealed, and appropriate amendments are not made include:
 - Guiding a student by the sleeve, or pulling a student from the path of an oncoming vehicle as the student runs into the street;
 - Restraining a student whose actions are posing a harm to themselves or others;
 - Redirecting a student with a history of running from the schoolyard to a safer part of the school facility, if they seem likely to do so; and,
 - Redirecting a student, who has a history of violent meltdowns when triggered, by leading the student from the classroom and out of view of their peers.
4. On January 30, 2004, the Supreme Court of Canada released its decision in the case of *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*. The issue was whether Section 43 is unconstitutional. Six of nine justices concluded that the provision does not violate the Canadian Charter of Rights and Freedoms (the Charter), as it does not infringe a child’s rights to security of the person (section 7) or a child’s right to equality (section 15), and it does not constitute cruel and unusual treatment or punishment (section 12).

As part of this decision, the Supreme Court of Canada interpreted this provision to determine its scope, ruling that it is illegal to use physical force to discipline teenagers or children under the age of two, to use objects – such as rulers or belts – against a child of any age, or to slap the head of any child. In addition, teachers are prohibited from using force against children as punishment.

5. Without replacement for Section 43, we anticipate an increase in the number of assault charges filed and prosecuted. As a precaution, teachers would be advised to not intervene

in situations noted above. This could result in more severe injuries to students and more calls to police. Further, the ordeal of a trial for these types of charges is often career-ending for teachers. Being found not guilty of assault is different from being innocent. Often, media coverage surrounding an arrest is more significant than coverage of the subsequent not-guilty verdict or acquittal.

6. If we bring a GBA+ lens to this legislation, teaching is, a profession that is dominated by women and already has a pervasive underrepresentation of racialized communities within it. Adding the prospect of more interactions with police and fewer considerations for teachers and educators to protect themselves means increased risk for a workforce that is primarily women and a less attractive work environment for communities that feel overpoliced. There is already a severe shortage of teachers in communities across Canada and the potential increase of violence in classrooms furthers the prospects of a prolonged and exacerbated crisis regarding the retention and recruitment of teachers.
7. In January 2024, the CTF/FCE partnered with Abacus Data to poll Canadians (n=2000) on a number of issues related to public education. Regarding violence in schools, we asked “Do you agree or disagree with the following statements”:



8. The CTF/FCE Advisory Committee on Indigenous Education (ACIE), a committee comprised of Indigenous educators from across Canada, is fully supportive of the CTF/FCE’s decision to seek an amendment to the *Criminal Code* of Canada. Members of the ACIE have described significant challenges within their communities regarding classroom violence and the necessity for educators to be able intervene appropriately, including physically from time to time, to protect students, colleagues, and themselves.

Provincial and Territorial Examples of Section 43

The following examples from CTF/FCE provincial and territorial Member Organizations refer to cases where Section 43 of the *Criminal Code* of Canada was or may have been used in defense of a teacher or education worker. These are cases since 2004 where the Supreme Court of Canada ruled in favour of the constitutionality of Section 43.

These have all been submitted in conjunction with their respective legal counsels.

The Alberta Teachers' Association

The Alberta Teachers' Association has cited one case since 2004 wherein Section 43 was a factor.

Elementary Teachers' Federation of Ontario

The Elementary Teachers' Federation of Ontario (ETFO) has cited **three cases since 2004** wherein Section 43 was a factor including one with a decision in June 2023. ETFO's legal counsel provided the following comments:

Section 43 comes up a lot, often in cases where teachers are using physical force to try and gain control over students who for example, are throwing tantrums or acting out in a way that is dangerous to those around them.

It is hard to gauge the extent to which the authority under section 43 convinces police officers not to lay a charge in the first place, since those police investigations may be closed with no explanation from the police or in some cases, legal counsel are not involved until after the police have decided to charge a teacher, at which point it is often too late to raise section 43 defences to attempt to pre-empt a charge.

It has been helpful to refer to section 43 in order to convince the Crown to withdraw charges that have already been laid. Here are two specific examples:

Scenario 1: Charged with assault after a kindergarten student went home with a bruise on his arm and said that [the teacher] caused it. [The teacher] described coming upon a kindergarten student alone in a classroom he was not supposed to be in. The student did not listen to [the teachers]'s direction to leave the room and [the teacher] took the student by the arm. The student then yanked his arm away from [the teacher], and [the teacher] held on, which caused the bruise. We filed a memorandum before the judicial pre-trial that relied on a number of arguments for dropping the charge against [the teacher], and his potential defence under section 43 was an important part of it.

Scenario 2: Charged with assault for allegedly ‘dragging’ a kindergarten student. [The teacher] described that the student was essentially having a tantrum, throwing blocks across the room in a way that was dangerous to other students. The availability of a section 43 defence was also an important factor in convincing the Crown to withdraw the charge before a trial. We did a judicial pre-trial memorandum for this case as well.

In May 2023, ETFO published a membership survey report (**APPENDIX A**) clearly illustrating a rise in the number of occurrences and the severity of violent incidents. 80% of members reported that violent incidents have increased and 66% of members felt the severity of violent incidents has increased. The report also found that violence is disrupting teaching, working, and learning conditions. 80% of members agree that “violence is a growing problem” at their school and 83% of members indicate that violence “interferes with classroom management”.

The Manitoba Teachers’ Society

The Manitoba Teachers’ Society (MTS) has cited **one case since 2004** wherein Section 43 was a factor. They provided the following excerpt from a decision from the Provincial Court of Manitoba dating from May 2012:

Mr. Shiaro stands charged with one count of assault against Corey Watt on December 16th, 2009. This case deals with Section 43 of the Criminal Code, namely reasonable use of force in the correction of a pupil.

On December 16th, 2009, Corey Watt was a 10-year-old grade 5 student at Greenway School. He had just finished gym class. Another boy, who Corey described as his friend, Rodson Bautista (phonetic), was drinking water at the water fountain. Corey came up behind Rodson and a little to his left, raised his knee and hit him in the buttocks. Rodson said: “Ah”. And Corey said: “Oops, my bad”. It was at that point that Shiaro, a teacher at Greenway, grabbed Corey by his hoodie, walked him three steps into the art room, where Ms. Robyn Johnson, a grade 6 teacher, and Ms. Mousseau, the vice principal, were, and told him to stay there. The evidence as to how that was done and what was said differs.

[...]

In all of the circumstances and for the reasons I have already set out, I find that Shiaro’s use of force against Corey Watt on December 16th, 2009 was justified under Section 43 of the Criminal Code. I therefore acquit him of the assault charge.

Newfoundland and Labrador Teachers' Association

The Newfoundland and Labrador Teachers' Association (NLTA) has cited **three cases since 2004** wherein Section 43 was used or was under consideration for application in defense of a teacher. There is also an additional on-going active investigation where it is expected that Section 43 will play a significant role in deciding the outcome of.

The examples include a 2021 Newfoundland and Labrador Provincial Court decision: **R v McGrath, 171 WCB (2d) 113** where a school principal was charged with four counts of assault and one count of uttering threats. Mr. McGrath was ultimately acquitted.

Nova Scotia Teachers Union

The Nova Scotia Teachers Union (NSTU) has cited **two cases since 2004** wherein Section 43 was a factor.

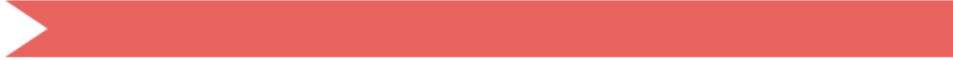
Ontario English Catholic Teachers' Association

The Ontario English Catholic Teachers' Association has cited **three cases since 2004** wherein Section 43 was a factor including a case where the teacher was an appellant appealing a conviction in April 2016 which resulted in the recommendation for a new trial.

Ontario Secondary School Teachers' Federation

The Ontario Secondary School Teachers' Federation (OSSTF/FEESO) has cited **43 cases since 2004** wherein Section 43 "has been applied as a defense for OSSTF/FEESO teachers and education workers (since 2004) in preliminary stages with legal counsel or law enforcement, prior to charges being laid, or during legal proceedings".

Of the 43 cases listed by the OSSTF/FEESO three have pending rulings, four have resulted in a teacher or education worker being charged, and 37 have resulted in no charges being laid. These examples range from handling a child throwing a fit to breaking up a fight between two students. These examples include a range of educators – teachers, educational assistants, custodial staff, and child and youth workers.



2023 | **ETFO ALL-MEMBER
VIOLENCE
SURVEY RESULTS**



STRATCOM



SURVEY OF ETFO MEMBERS FINDS VIOLENT INCIDENTS ON THE RISE

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A SIGNIFICANT MAJORITY OF ETFO MEMBERS REPORT A RISE IN THE OCCURRENCE AND SEVERITY OF VIOLENT INCIDENTS IN ELEMENTARY SCHOOLS

The Elementary Teachers' Federation of Ontario (ETFO) represents approximately 83,000 members, including public elementary teachers, occasional teachers, designated early childhood educators, education support personnel, and professional support personnel. ETFO commissioned national research firm Strategic Communications (Stratcom) to conduct a survey of its members about their experiences of workplace violence. Almost 25,000 ETFO members responded to the survey.

The survey results reveal an increase in the number and severity of violent incidents in elementary schools. They also say that front-line supports are not always available, administrators know that violence is a problem, but do not always act on reports of violence, and that ETFO members are suffering from the effects of violent incidents.

ETFO MEMBERS REPORT A RISE IN THE OCCURRENCE AND SEVERITY OF VIOLENT INCIDENTS

More than three-quarters (77%) of ETFO members have personally experienced violence or witnessed violence against another staff person. This is an increase from the 70% reported in 2017. Educators working with younger students are more likely to experience violence, and the vast majority of members who work in special education have personally experienced violence or witnessed violence against another staff person (86%).



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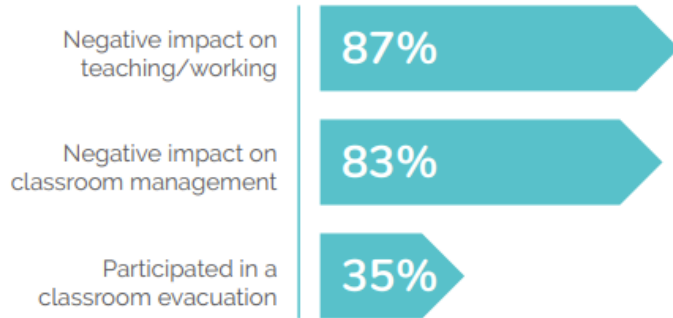
Almost all ETFO members are feeling the negative impacts on their work, with 87% of members agreeing that violence in elementary schools makes working with students more difficult.

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Four out of five members (80%) state there are more incidents of violence in schools since they started working in the Ontario public elementary school system, and two-thirds of members (66%) say the severity of violent incidents has increased. The vast majority of members (80%) agree that "violence is a growing problem" at their school. Almost three-quarters of members (72%) state the number of violent incidents has increased since the beginning of the COVID-19 pandemic.

VIOLENCE IS DISRUPTING TEACHING, WORKING, AND LEARNING CONDITIONS

Almost all members are feeling the negative impacts on teaching and working conditions, with 87% of members agreeing that violence in elementary schools is "making teaching more difficult" and 83% saying that violence "interferes with classroom management" (both are an increase of 4% since 2017). Just over a third of ETFO members (35%) participated in a classroom evacuation during the 2022-2023 school year. This increases to 40% of ETFO members who work in Kindergarten.



FRONT-LINE SUPPORTS ARE OFTEN NOT AVAILABLE TO EDUCATORS AND STUDENTS WHEN NEEDED

A majority of ETFO members report that educational assistants (61%), social workers (56%) and child and youth workers (53%) were available only "some of the time," "rarely," or "never" when needed in the 2022-23 school year.



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More than two-in-five members (42%) have suffered a physical injury/illness or psychological injury/illness as a result of workplace violence.

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SCHOOL ADMINISTRATORS KNOW THAT VIOLENCE IS A PROBLEM

Although 58% of members who experienced violence informed their administrators, only 41% indicated that they always made a written/online report, meaning that administrators are aware of the significant underreporting of violence. At the same time, 63% of ETFO members say that school administrators do not take the problem of violence in elementary classrooms as seriously as they should.

SCHOOL ADMINISTRATORS ARE NOT ACTING ON ALL REPORTS OF VIOLENCE

Only 36% of ETFO members who reported incidents of violence indicated that there was follow-up or investigation “in all cases” or “in some cases”. This is a significant decrease from the 50% reported in 2017. When there were follow-up actions to prevent the recurrence of violent incidents, only 8% of members rated those actions as effective.

VIOLENT INCIDENTS ARE CAUSING MEMBER INJURY/ILLNESS, BUT IT ISN'T ALWAYS ACKNOWLEDGED AS WORKPLACE INJURY/ILLNESS

More than two-in-five members (42%) have suffered a physical injury/illness or psychological injury/illness as a result of workplace violence against them in the 2022-23 school year. Approximately 30% of ETFO members' injuries warranted a WSIB claim. However, among those who could have filed a WSIB claim, only 17% did.



Methodology: These are results from an online survey of ETFO members from February 8 to March 22, 2023, conducted by Strategic Communications. All members received an email invitation with a unique URL to complete the online survey with regular reminders, resulting in a final sample of 24,872 which was weighted to match the gender, region and member type of the ETFO membership. The margin of error for the sample is +/- 0.4%, 19 times out of 20. Members were asked to report on their experiences from the 2022-2023 school year.

Strategic Communications Inc. (Stratcom) is a full-service opinion research and communications firm with staff in Toronto, Vancouver, Ottawa, Saskatoon, and Brighton and London, U.K.