

TIP SHEET: Criminal Code Section 43 & Classroom Physical Interactions



TIP SHEET: Examining Section 43 of the Criminal Code in the Context of Classroom Physical Interactions

Gretchen Brown, Counsel

Karlan Modeste, Counsel

British Columbia Teachers' Federation

Key Points:

Section 43 of the *Criminal Code* states:

43. Every schoolteacher, 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.

It is the only *Criminal Code* provision that parents and teachers can rely on when defending the use of force to control or restrain children.

In *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* [2004] 1 S.C.R. 76, the Supreme Court of Canada found that Section 43 does not violate the Charter as it only protects force that is “by way of correction” and is “reasonable under the circumstances”.

The court found that the use of corporal punishment by teachers is not acceptable but Section 43 stills protects the use of reasonable corrective force to restrain or remove a child in appropriate circumstances.

Courts have continued to reference Section 43 in cases involving teacher physical interaction with students but the progression of cases shows that Section 43 is now only accepted as a defence in cases where the teacher’s conduct was well-intentioned and the physical interaction was very limited.

Movement to Abolish Section 43

Teacher organizations have been hesitant to support campaigns to repeal of Section 43 out of concerns that teachers would be left with inadequate protection from assault charges.

The Truth and Reconciliation Commission has led to renewed discussion as it calls on the government to repeal Section 43.

The education sector should re-evaluate its position on Section 43 for the following reasons:

- Historical abuses documented in Truth Reconciliation Commission, including abuses involving not only corporal punishment but also restraint and enforcement of directions
- Value of Section 43 as a defense for teachers is diminishing as courts are accepting only very minor uses of physical force in a narrow range of circumstances as reasonable
- Role of police and courts in regulating teacher physical interactions with students is declining as role of professional regulators expands
- Examples involving health care workers, who do not have an express defense to assault by virtue of their role, suggest that common law defenses may provide adequate protection

Current Status of Efforts to Repeal Section 43

The Trudeau government has committed to implementing the Truth and Reconciliation recommendations, including the repeal of Section 43. It is unclear at this point whether the government will follow through on that promise.

Bill S-206, *An Act to Amend the Criminal Code (protection of children against standard child-rearing violence)* was given a first reading in the Senate on December 8, 2015 and a second reading on May 31, 2018. Bill S-206 removes Section 43 from the Code without replacing it with any amended wording. Bill S-206 was referred to the Senate Legal Affairs Committee and does not appear to have been pursued further.

Given the trends with respect to societal views on physical interactions with children as well as the significance of Section 43 in the Truth and Reconciliation Commissioner recommendations, it seems likely that changes will eventually be made to Section 43.

Further discussion within the education sector is warranted to develop a common understanding of how physical interactions are reasonably part of caring for and instructing children and how teacher conduct in this area should be regulated.

Select Bibliography

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