

# Ensom & Associates

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March 30, 2024

Dear members of the Justice and Human Rights Committee,

I write to encourage your thoughtful and favourable review of Bill C-273, an act to repeal section 43 of the Criminal Code of Canada.

Repeal of section 43 of the Criminal Code is long overdue. This archaic 130-year-old law has provided cover — encouragement for some — to parents, teachers and others *in loco parentis* to hit and hurt children for disciplinary purposes. For many Canadians, the message of section 43 is that hitting children must be an effective disciplinary strategy — since the state permits physical punishment of children, it surely must be corrective. The evidence paints a very different and troubling picture.

I cannot think of any other public measure that would better protect so many children from the kinds of harm I have seen in my clinical and research work. A very solid body of research has demonstrated that physical punishment is the most common form of violence experienced by children — and that it is strongly linked to broad and enduring personal and societal harm. The message of section 43 undercuts public education about the harm of physical punishment and the need for alternative and positive discipline of children. Research has demonstrated that physical punishment of children imposes a substantial economic burden on Canada. Public opinion surveys reveal ever declining support for physical punishment.

Hitting children is a violation of their human rights, as set forth in the United Nations *Convention on the Rights of the Child*, which Canada has ratified. The UN Committee on the Rights of the Child has — on five reviews of our country's fulfillment of the obligations attendant on ratification of the Convention — urged Canada to repeal our law that permits hitting and hurting children. To date, 65 countries have already prohibited physical punishment of children; 27 more have committed to doing so. To date, nearly 700 respected Canadian organizations have formally endorsed the *Joint Statement on Physical Punishment of Children and Youth*, which calls for children to be given the same legal protection as adults from assault. Canada has not yet committed to doing so before its own citizens and before the nations of the world. Canada has not followed through on its promise to implement the Truth and Reconciliation Commission's call to action to repeal section 43 of the Criminal Code.

The narrowed scope of the constitutionality of the section 43 defence (Supreme Court of Canada 2004 split decision) does not provide protection of all children from parental and caregiver hitting and hurting. The decision actually painted a body and developmental map of permitted physical punishment of a child. The decision leaves children between the ages of 2 and 12 unprotected from disciplinary violence. The decision left Canadian parents, many professionals and some judges confused.

Canada has a reputation for demonstrating a social conscience and leadership in protecting vulnerable people. But Canada is long overdue in ensuring that our youngest citizens have the same protection against violence that is taken for granted by adults and has been afforded to children in many other countries.

I hope you will thoughtfully consider the substantive expert evidence and the experience of other countries that will soon be presented to your committee. I urge you to move Canada into the company of the steadily growing number of countries that have — on the same evidence you will soon study — given their children protection from legal violence.

I urge you to recommend your parliamentary colleagues pass Bill C-273 — as tabled — to finally repeal section 43 of the Criminal Code of Canada and provide legal protection for all of Canada's children.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Ensom", with a stylized, flowing script.

Ron Ensom, M.S.W., RSW

Enclosures:    *Rationale for Repeal of Section 43 of Canada's Criminal Code*

Ron Ensom - thumbnail bio