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Chair: Ms. Lena Metlege Diab



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• (1105)

[Translation]

The Chair (Ms. Lena Metlege Diab (Halifax West, Lib.):
Good morning, everyone.

[English]

I call the meeting to order.

Welcome to meeting number 101 of the House of Commons Standing Committee on Justice and Human Rights.

Pursuant to the order adopted by the House on February 14, 2024, the committee is meeting in public to begin its study of Bill C-273, an act to amend the Criminal Code with regard to Corinne's quest and the protection of children.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application. Members using Zoom already know this, so I will not go through the process of how you use Zoom.

All our witnesses are appearing in person for the first panel.

[Translation]

I thank all the witnesses for being here with us today and welcome them.

From the Canadian Teachers' Federation, we have Ms. Heidi Yetman, president, and Ms. Tesa Fiddler, member of the Advisory Committee on Indigenous Education.

From the Quebec Provincial Association of Teachers, we have Mr. Sébastien Joly, executive director.

Each witness will have five minutes to give their presentation. We will then move on to questions.

[English]

We'll begin with the Canadian Teachers' Federation.

Ms. Heidi Yetman (President, Canadian Teachers' Federation): Thank you, Chair.

I'm pleased to be speaking today as a representative of the Canadian Teachers' Federation, an organization comprising teachers' unions in every province and territory. I am a teacher with over 20 years of experience in the classroom.

I would like to acknowledge that I work and play on the unceded territory of the Algonquin Anishinabe people.

As you know, I'm here to talk about Bill C-273, a bill that seeks to repeal section 43 of the Criminal Code. With this, I need to state first and foremost that the federation fully endorses all TRC calls to action, including call to action number six. We also fully condemn any form of corporal punishment.

That being said, the federation cannot support this legislation passing unamended. The risk of unintended consequences that could make classrooms more unsafe is too great. Teachers need to be able to physically intervene in certain classroom situations. This is the reality of dealing with complex classrooms with complex needs.

I'm sharing my time today with teacher colleague Tesa Fiddler. Tesa is a member of the federation's advisory committee on indigenous education, and she's also a member of Education International's indigenous reference group, so I'm really pleased to present Tesa.

Ms. Tesa Fiddler (Member, Advisory Committee on Indigenous Education, Canadian Teachers' Federation): *Meegwetch*, Heidi.

Tesa Fiddler, *nindizhinikaaz*. I am a first nations educator, registered to Kitchenuhmaykoosib Inninuwug in Treaty 9. I'm also connected through my father to the traditional territory of Onigaming First Nation in Treaty 3. My family and I have lived and worked in Thunder Bay, Ontario, for the last 26 years, and we raise our family there.

First, I would like to acknowledge that I'm grateful to the Anishinabe Algonquin people, whose land I'm visiting here, for being caretakers of this territory since time immemorial and for allowing us to do this work here.

As an indigenous educator with close to 30 years of experience—I couldn't believe it when I read that—and as someone who is deeply committed to supporting the act of reconciliation, I'm here to speak about the necessity of amending Bill C-273.

I want to assure the committee and other individuals who are committed to repealing section 43 that I also recognize the significance and the importance of making this important change to the Criminal Code.

I personally honour and respect the calls to action. As a second-generation survivor of residential schools—my mother attended Poplar Hill, and my father attended Cecilia Jeffrey—the calls to action have significance to me both personally and professionally. As a witness to violence myself, I would never condone any form of violence in homes, classrooms or other institutions. I have the utmost respect for the Honourable Murray Sinclair and the many individuals who courageously led the TRC and provided this country with a guide to improving relations between indigenous and non-indigenous peoples.

I am not here to disagree with the repeal of section 43. I am here to request that you consider the suggestions that teaching experts bring forward, suggestions that will continue to protect students and their educators.

Over my career, I've worked with students who have complex needs, and I've been a mentor to many teachers and educators who deal with complex classroom issues. We have students with autism and FASD, students with problems regulating temper, students with histories of violence and exposure to trauma. In an ideal world, there would be more support for students in difficult situations, and educators would get the support we need to deal with these complex student profiles and situations in the classroom. The sad reality is that it is not there, so passing Bill C-273 without an amendment will make an already challenging job more challenging.

These are the realities that all educators, including indigenous educators, are facing. We have very complex community situations right now. We are in crisis with the well-being of our children. As a parent of a child with complex special needs, I recognize the challenges that our communities and our families are facing. It really is a disadvantage to children and to educators to repeal this section and not be making the amendments that are needed to protect children.

Meegwetch.

The Chair: Thank you for your opening remarks.

• (1110)

[*Translation*]

I now give the floor to Mr. Joly, executive director of the Quebec Provincial Association of Teachers.

Mr. Sébastien Joly (Executive Director, Quebec Provincial Association of Teachers): Thank you, Madam Chair.

My name is Sébastien Joly, and I am the executive director for the Quebec Provincial Association of Teachers, or QPAT.

QPAT represents the 8,000 teachers working within the network of Quebec's anglophone public schools. QPAT is also a member of the Canadian Teachers' Federation, or CTF, and negotiates as a group with the Fédération des syndicats de l'enseignement du Québec.

Members of the committee, I want to thank you for giving me the opportunity to present Quebec's point of view, as well as the reality of the teachers we represent, as part of the study of Bill C-273, which proposes to repeal section 43 of the Canadian Criminal Code.

From the outset, I would say that repealing this section is cause for great concern for both QPAT and for the Canadian Teachers' Federation. Knowing that this bill flows from the 94 recommendations and calls to action put forth by the Commission on Truth and Reconciliation of Canada, it is imperative to say the intent of QPAT's position does not minimize in any way the years of abuse indigenous people in Canada experienced in residential schools. Nor does it call into question the highly symbolic value of repealing section 43 of the Canadian Criminal Code, which symbolizes the past reality of practising corporal punishment, both institutionally and domestically. On the contrary, QPAT fully supports the spirit of the measures recommended by the Commission. In fact, QPAT participated actively in the curriculum review process in line with calls to action 62 and 63, under the title of "Education for Reconciliation." This resulted in the revision of the history and civic education programs in Quebec.

Furthermore, like the CTF, QPAT has opposed the practice of any form of corporal punishment for several decades.

[*English*]

While we are fully aware of the intent behind the introduction of this bill, it is essential to ensure that its adoption does not result in unintended and unfortunate consequences for the teachers we represent.

In this sense, we are convinced, following the advice of our legal experts, that the removal of the elements of protection included in section 43, in the absence of an amendment to the Criminal Code to guarantee protections for school staff, would constitute a serious risk for teachers as well as other categories of school staff, given the context and conditions in which they practise their profession on a daily basis.

• (1115)

Indeed, the increasingly heavy and complex composition of the classrooms in the context of a glaring lack of professional and specialized support resources, as well as the constant progression of violence in our schools, whether in or out of class, means that teachers are confronted on a regular basis with issues that could require the use of reasonable force towards a student with the sole objective of fulfilling their responsibility to ensure a safe school environment for the students. The legal vacuum thus created would necessarily expose them to an increased risk of criminal charges, prosecution or even convictions for interventions carried out in the course of their duties. These interventions would automatically be considered assault under subsection 265(1) of the Criminal Code of Canada.

As executive director of QPAT, I am directly responsible for following up on all cases related to criminal allegations filed against teachers who are members of our local unions throughout Quebec, working closely with the law firm Battista Turcot Israel from Montreal, which represents our members in such cases.

As such, I can confirm that the existence of section 43, the scope of which was significantly redefined by the 2004 Supreme Court decision, can no longer be used as a defence for teachers charged with assault within the meaning of the law. Nevertheless, I can confirm that it is the very existence of section 43 that allows the various stakeholders involved—police investigators, prosecutors and judges—to exercise a certain level of discretion in such cases, particularly when it is clear, following an investigation, that an educator used reasonable force for the purpose of ensuring a safe school environment for their students. As a result, many cases do not proceed to trial. According to our legal experts, the complete repeal of section 43 would result in the disappearance of this level of discretion and an increase in the number of charges, prosecutions and convictions, with all the impact that this implies for the individuals concerned and their families.

Finally, we are also concerned that this increased risk for teachers could cause additional unfortunate and unintended consequences, including making our schools less safe but also discouraging potential future teachers from choosing this beautiful profession and making a career out of it, thereby further exacerbating the teacher recruitment and retention crisis facing our public school systems in Quebec and across the country.

It will be my pleasure to answer any questions you might have and develop more of the elements presented in the brief submitted by QPAT.

Thank you.

[Translation]

The Chair: Thanks to all of you.

We will now start our first round of questions.

[English]

We'll start our first round with Mr. Frank Caputo.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you very much.

I want to thank all the witnesses for being here. It's a pleasure and an honour to be with you, in part because I have a child who is neurodiverse, my sisters are both teachers, and I practised and taught criminal law for a number of years. It feels like the intersection of those three things coming together. I thank you for the discussion and for your presence here.

It goes without saying that everybody here, including the panel, denounces any form of abuse. The question is this: How should the law properly respond to what is necessary—I suppose I could be using your words—for a “safe school environment”? That's where I take your positions.

In your opening statements, you got into the broad strokes. I'm not sure if, on behalf of both organizations, you could point specifi-

cally to the frailties of the removal of section 43. What would those be, please, from your experience?

Ms. Heidi Yetman: As I said in my opening statement, I've taught for over 20 years—23 years. I remember my first job. I was in a *présecondaire*, which is a grade 7 class. I was brand new—you know, when you're a new teacher, you do your best—and a fight broke out in my class. Luckily, they were smaller than I. They were in grade 7. They were 12 years old. It was quite the fight, because there was blood drawn. I pulled those two children apart, and one I took with me to the principal's office. According to the Criminal Code, that could be assault. Of course, I did my duty because I wanted to protect the kids who were in the fight and to protect the children who were in the class. I could have been charged with assault for doing what I did. I didn't know. I was new. I hadn't even heard of section 43.

Our fear is that, by not amending section 43, we put teachers at risk of being charged with assault. In our brief, there are about 50 examples of incidents where section 43 was called upon and those cases didn't go to court. Some did. There was one recently, in 2023, Bender versus Ontario, that went to court and the teacher was dismissed. This is what we fear.

Another thing we fear is.... Personally, as a union leader, I would be telling teachers, “Be very careful. Do not put your hands on children. There is nothing to protect you in the criminal law.”

Mr. Sébastien Joly: Essentially, we in Quebec have the same concerns regarding the repeal of section 43. With our experience in Quebec, and the experience of the Quebec Provincial Association of Teachers regarding allegations of a criminal nature that were filed over the years against teachers, it has been confirmed by the legal counsel we work with on all those cases that section 43.... We've been asked how many cases or court decisions have mentioned section 43 as a defence for a teacher or education worker. There aren't many, and there's a reason for that: The majority of cases do not go to trial.

I was a witness in one case where we went to trial. We were before the judge representing our member. I think it was a junior prosecutor, who probably was not really aware of the existence of section 43, and the judge, from the get-go, basically right away took a decision at the bench, not documented, and he actually reminded the prosecutor of the existence of section 43.

It's very important to understand that in probably 90% to 95% of the cases where there are allegations, section 43 is considered by the different stakeholders before they go to trial. Obviously, from experience, there are allegations on a regular basis towards teachers for various reasons, including assault or alleged assault, and it takes a big toll on these teachers and their families. Even for an investigation to be completed, oftentimes we're looking at a year to a year and a half before the investigation is completed, and that's even before the prosecutor looks at the case, so the teachers are suspended for a good amount of time.

Certainly, we have exactly the same concerns that we will multiply the number of allegations and accusations, and there may be more cases going to trial in the absence of section 43.

• (1120)

The Chair: You have 30 seconds.

Mr. Frank Caputo: Thank you, Chair.

I appreciate your time. I know we probably don't have time to go through a lot more here, but to me, a teacher.... I'm thinking about my own child too and the needs that arise in order to protect them and protect others in those situations. I mean, the situation mentioned by Ms. Yetman there, to separate people, to me, is an unfortunate part of the job. I don't think any teacher wakes up in the morning saying, "I want to do this", but I take your point. Assault is non-consensual touch. No one is saying, "Please touch me there", so I take your point.

[*Translation*]

The Chair: Thank you.

[*English*]

We now move to Mr. Housefather.

Mr. Anthony Housefather (Mount Royal, Lib.): Thank you, Madam Chair.

Thank you so much, Ms. Yetman and Monsieur Joly. Both of your organizations are very important to me. My mom and both of my aunts were school administrators, so I've heard directly several times about the consequences of this bill and what they think about it.

Mr. Joly, you made a very good point, which a lot of people have raised, about there being so few times when this needs to be used as a defence. What you're actually saying is that it rarely needs to be used as a defence, because prosecutors know that it's there and therefore they are not charging people with allegations related to assault in the classroom. Would that be correct?

Mr. Sébastien Joly: That's exactly what I was saying. Again, I've been handling these cases since 2016, but the firm we're working with has been working with the association for more than 20 years. Certainly, there was a big change after the 2004 Supreme Court decision that really limited or realigned the scope of section 43. Most cases don't go to trial and charges are not deposited, because of the existence of section 43 as realigned by the 2004 Supreme Court decision.

Again, in an ideal world, it would be possible for teachers not to intervene physically, ever. For students, we would have enough

support staff and resources to deal with all situations. However, as I wrote in my brief, the statistics are very clear about violence in classrooms and the number of possible situations teachers may be faced with on a daily basis, particularly those who are teaching in specialized settings—we're talking daily.

Obviously, it would be a big loss if there was no amendment to provide protections for our teachers and educational workers.

Mr. Anthony Housefather: I appreciate that.

I have one more question for you, Mr. Joly, before I go to Ms. Yetman.

One of the claims that have been made is that there are other professionals who deal with children, like nurse's aides and child care workers, who are not covered by this defence, and yet, somehow, there are not an extraordinary number of charges laid against them.

Could you explain why you believe there needs to be a specific category of protection for teachers?

Mr. Sébastien Joly: If you read my brief, you will see that I'm talking about educational workers, which also includes school staff. Obviously, we represent teachers and people who work in the education system. We do not represent nurses.

The number of cases compared to the number of workers in the school system is not that great. However, as far as we're concerned, every single case counts, and we have enough per year, just for the 8,000 teachers we represent, where section 43 and the elements of protection included in it are considered to avoid charges being laid against teachers for applying reasonable force in a context where they're trying to ensure a safe school environment for their students.

• (1125)

Mr. Anthony Housefather: Thank you.

Ms. Yetman, we had a chance to talk about this. I liked the example you gave of your grade 7 class when you first started teaching.

As I understand it, your organization is not opposed to the repeal of section 43; you simply want it to be replaced by a modified defence that would be more in line with contemporary values. Is that correct?

Ms. Heidi Yetman: Well, I think section 43 was written in 1892, so we do need to update that. Of course, the 2004 Supreme Court decision was very helpful in adding guidelines. We believe in truth and reconciliation. We actually think it's a shame that only 13 of those 94 calls to action have happened so far.

I think it needs to be revised. It is too vague and it is unclear, and that's why we're suggesting an amendment. It would be called something like a safe school amendment that really focuses on safety.

Mr. Anthony Housefather: I agree 100%. I've seen the amendment, and I support the variation of this amendment. Would you object if other professionals, like child care workers and nurse's aides, for example, who also deal with children in a similar way, were incorporated into the same wording you proposed?

Ms. Heidi Yetman: Now, speaking personally, I don't see a problem with that. Of course, I represent teachers and education workers, and I wouldn't want to speak on their behalf.

I think we need to protect people who are working with children and are doing things to keep them safe. That's what it's all about. It's about keeping children safe.

Mr. Anthony Housefather: It's about making sure that there is not a teacher or another educator who won't act in a situation where they need to pull children apart, like you did.

Thank you so much.

Madam Chair, I see your hand is up.

The Chair: No. You have 20 seconds left.

Mr. Anthony Housefather: I just want to thank the witnesses for being here. I highly respect the organizations.

Thank you.

The Chair: Thank you very much.

[Translation]

I now give the floor to Mr. Fortin.

Mr. Rhéal Éloi Fortin (Rivière-du-Nord, BQ): Thank you, Madam Chair.

I will take advantage of Mr. Housefather's 20 seconds.

Voices: Oh, oh!

Ms. Fiddler, Ms. Yetman and Mr. Joly, I thank you for being here with us today.

I don't know if it was announced at the start, but for the sake of the cause, I'd like to point out that we have interpretation service. You may speak in English or in French as you wish. Everyone will hear your testimony correctly.

I am happy to see you today. Our children's safety and education are indeed significant concerns. It is quite obvious that violence against children must end and we must do what is necessary, as legislators, so that it is not authorized in any way.

After a brief overview of jurisprudence and events in other jurisdictions, it seemed obvious to me that corporal punishment was widely prohibited. In fact, it's largely the case almost everywhere. I am wondering, however, if we aren't confusing two different things, meaning corporal punishment and the use of force to ensure children's safety and education. It can be a matter of protecting them, but also of protecting their environment, for instance, from other classmates. That is what I'm concerned about as we conduct our study of Bill C-273. I think what you told us this morning is interesting. It goes along the lines of what I had in mind from the beginning.

Mr. Housefather asked if this type of exception might be useful in the case of workers, specifically health workers. I wonder if this might also apply to parents. Shouldn't they be on the same footing, perhaps by making the required adaptations? We're talking here about any person with parental authority or delegated authority, regardless of whether they are a teacher, parent or someone else.

What is your opinion on that?

I might invite Mr. Joly to answer first. Ms. Yetman or Ms. Fiddler could perhaps respond afterwards.

Mr. Sébastien Joly: I'm a parent too. I am probably speaking as a parent, but obviously, I'm doing so as a representative of the Quebec Provincial Association of Teachers. I am therefore speaking on behalf of teachers and our colleagues in other job categories within the education sector.

Mr. Housefather asked if we could extend this type of exception to all stakeholders, for example educators working in youth centres. Of course, we would not oppose it. In this case, however, it's a matter of speaking on behalf of teachers and raising our concerns about the consequences of repealing section 43 without amendment.

They face risks every day because of their working conditions and the situations they have to face on a daily basis.

• (1130)

Mr. Rhéal Éloi Fortin: What about the parents?

Mr. Sébastien Joly: As I said, I am a parent. I could therefore give you a personal opinion, but the Association does not speak on behalf of parents. Parents' groups could come and talk to you about those issues.

As a parent, I would say it's reasonable to include parents.

That said, I am representing teachers here. I will try to maintain political correctness.

Mr. Rhéal Éloi Fortin: Thank you, Mr. Joly.

Ms. Yetman, did you want to add any comments?

Ms. Heidi Yetman: My answer is somewhat identical. I too am a parent. I have two boys. I remember, for example, that they sometimes needed to be held to get their winter boots on.

For my part, I do not oppose the idea of tabling an amendment that could help the general public, including parents. However, since I represent teachers, I have to speak on their behalf.

Mr. Rhéal Éloi Fortin: Thank you for representing teachers. You are all doing it very well.

I asked the question anyway because in a way, you are experts in children's education. Certain broad principles you would apply could also apply to anyone participating in children's education, be they a parent, an uncle, an aunt, or an educator entrusted with supervising a five-year-old boy for a weekend, for example.

At the end of the day, shouldn't all these people be treated the same way?

Shouldn't we all make sure that anyone can intervene effectively when parents entrust them with supervising a child, one way or another? I share your opinion on the matter.

Since there must not be a lot of time left, I'd like to move on to a completely different subject.

We know that Bill C-273 is the result of a call to action in the report of the Truth and Reconciliation Commission of Canada. You talked about it earlier and you're familiar with the report itself.

Do you have an opinion on the way that repealing section 43 of the Criminal Code could help improve the situation of indigenous communities in Canada?

We understand that abuses occurred in the past, and there's no point in lingering on the subject. We all agree that it made no sense.

That said, how will repealing this section today help indigenous communities in Canada to flourish?

Can you give me some comments on that issue?

The Chair: There are 30 seconds left.

[English]

Ms. Tesa Fiddler: I can try.

The repeal of section 43 would honour the history and the truth that came out of that history. That history has caused a legacy of ongoing violence and harm, so those were the recommendations that came out of that.

We could probably go back now to community—this is eight years later—and start asking what we need next, and that is to put in those safeguards that will protect children, families and the organizations that are providing a service to a very vulnerable population.

I think that is what the repeal would do for our communities.

[Translation]

Mr. Rhéal Éloi Fortin: Thanks to all three of you.

The Chair: Just for the record, I'll note that I gave an extra 20 seconds.

We will now move on to the next speaker.

[English]

Now, we'll move on to Mr. Garrison, please, for six minutes.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): Thank you very much, Madam Chair.

I thank the witnesses for being here today.

I recognize that you're doing the job of representing your members, but I have some questions. They are not hostile, but I have some concerns.

I'll talk about the 94 calls to action. Was either of your organizations involved with the Truth and Reconciliation Commission at the time of the hearings?

Ms. Heidi Yetman: I have only been president since July 2023, so I really can't answer that, but we work very closely with our advisory committee.

I don't know, Tesa, if you were involved at that time.

• (1135)

Mr. Sébastien Joly: Our association was not involved in the workings of the commission, but we did take steps in the early 2000s, even before the end of the work done by the commission, to push the Government of Quebec to review education programs, namely history programs. I'm a history teacher. As a new representative, I've been pushing that for quite a while, with some success. It's not perfect, but there were certainly changes made in the content on calls to action 62 and 63 in particular. We were actively involved.

Mr. Randall Garrison: If I'm not mistaken, I believe both of your organizations did endorse the calls to action at some point.

Ms. Heidi Yetman: Yes, that is correct. We have done a lot of work in trying to get the calls to action for education moved forward in the provinces.

Mr. Randall Garrison: Go ahead, Ms. Fiddler.

Ms. Tesa Fiddler: I've been with the Canadian Teachers' Federation on the advisory committee for indigenous education. This is my fifth year with the organization, and I worked provincially with the Ontario English Catholic Teachers Association for about seven years. It was shortly after the calls to action were published.

I've been part of the revisions to the Ontario curriculum. I've been on the writing teams. Personally, I gave testimony at the Truth and Reconciliation Commission. I've worked very closely with many folks who have been part of the TRC. My husband worked with the Truth and Reconciliation Commission and travelled across the country. The advisory committee brings that depth of knowledge and guidance to the work of the Canadian Teachers' Federation.

Mr. Randall Garrison: I'm asking that question of both of you, because I think there's both a real, substantive problem and a perceptual problem if non-indigenous organizations are substituting their judgment for the indigenous community on this section.

What I was trying to do was give you a chance to express your support.

Has there been any communication with Murray Sinclair or the other commissioners about these concerns with the repeal of this section?

Ms. Heidi Yetman: I do know that the Canadian Teachers' Federation did meet with Mr. Sinclair. This was before my time. We have spoken to him about this particular action.

Mr. Randall Garrison: I do think an important part of the reconciliation process is to continue that dialogue.

Mr. Joly.

Mr. Sébastien Joly: I was part of meetings back in 2018 with a group of senators who had taken on this action and to raise the same concerns. I met with five senators at the time. Then it fell by the wayside. Now it's been picked up again.

Certainly we express the same concerns with the complete repeal of section 43 without any amendments.

Mr. Randall Garrison: Go ahead, Ms. Fiddler.

Ms. Tesa Fiddler: [*Inaudible—Editor*] the new term of the indigenous advisory committee. We've reached out to re-establish and maintain a relationship with the National Centre for Truth and Reconciliation as well. With COVID, there was a pause. We're actively doing that work to engage the NCTR and continue supporting the good and important work they do.

Mr. Randall Garrison: Thank you for anticipating my next question.

We have some other technical problems, I think, given that we're dealing with a private member's bill before us. I do not in any way doubt the challenges that teachers are facing in the classroom at this time. I am not at all one to diminish the concerns about the legal consequences of the repeal.

However, I would raise two things here. One is that education is primarily a provincial jurisdiction. Therefore, I'm not sure, outside the Criminal Code, if we can deal with some of the major problems. The second is, of course, that this bill deals with repeal. Private members' bills have a certain scope by the rules of the House, and trying to amend either other sections of the Criminal Code or other acts may be difficult. It may, in fact, be out of order.

I just wonder if you have any reaction to those concerns.

Mr. Sébastien Joly: When we consulted our legal counsel, certainly this technical issue of how you would bring about an amendment was raised. From our understanding, and maybe we're wrong, it would be possible for the committee to increase the scope of the bill. If not, is it possible to actually make an amendment to the Criminal Code at a different time?

Again, it would be ideal for us if it was attached to this bill, so there would be a guarantee of ensuring protections for education workers and teachers within the bill.

• (1140)

Ms. Heidi Yetman: Of course, I'm a teacher, and I'm not a legal—

The Chair: Time's up, but I would like to hear the answer to that.

Ms. Heidi Yetman: I'm not a legal connoisseur, and I don't know the procedures in legislation, but we are counting on all of you here in the room to help us with that, so we can make sure that students are safe in classes.

The Chair: Thank you very much.

We will now go to our second round.

We have Marilyn Gladu, for five minutes.

Ms. Marilyn Gladu (Sarnia—Lambton, CPC): Thank you, Chair.

Thank you to the witnesses for being here.

I come from a family of teachers. My mother was a teacher, and my daughter teaches now on Six Nations. I'm very happy to hear your comments today.

One of the discussions we've had in the testimony we have heard so far is that we have clarified that it's already illegal to abuse a child or do violence to a child. Certainly, the Supreme Court decision, as Mr. Joly mentioned, with their interpretation, added:

the use of force must be sober and reasoned, address actual behaviour and be intended to restrain, control or express symbolic disapproval. They also noted that the child must have the capacity to understand and benefit from the correction, which means that section 43 does not justify force against children under the age of two or those with certain disabilities.... According to the decision, reasonableness further implies that force may not be administered to teenagers, as this can induce aggressive or antisocial behaviour. Moreover, force may not involve objects, such as rulers or belts, and it may not be applied to the head.

I think we've heard from you today that there are not that many complaints being brought forward, because people understand the protections under section 43.

My question, then, is this: Do you think section 43, as written, does provide you needed protection today?

We'll start with Mr. Joly.

Mr. Sébastien Joly: Yes, it does—as written but also as re-aligned or modified with the Supreme Court decision from 2004. It is the opinion of our legal experts that if it's repealed completely, without any amendments—again, technically I don't know how to do this, but maybe you know—it would pose a risk. It would change the game when it comes to these kinds of allegations.

As I was saying, section 43 is always considered by the stakeholders involved, by the investigators and whatnot. It's always after the investigation has been completed and the conclusion of the investigation shows the use of reasonable force as per the definition.

Also, it was meant to provide protections or to ensure safety in the school environment. That's where the stakeholders can use their discretion. That's where the police will usually say to the prosecutor that they don't recommend proceeding with charges. The prosecutor will then move ahead and not proceed with charges. That's where it has an impact in 95% of the cases.

Ms. Marilyn Gladu: Thank you.

I'll ask you the same question, Ms. Yetman.

Ms. Heidi Yetman: Yes, right now it is protecting teachers.

There was a judgment on December 20, 2023, by the Ontario court in *R. v. Bender*. It was an elementary school teacher who was teaching grade 3. He was teaching a difficult class of students with special needs. Unfortunately, what happened was that he was charged in December 2020, and it took three years before the judgment came out. The conclusion was that his actions were justified under section 43.

So yes, it is doing the job, but as I said before, it was written in 1892. I think the problem with section 43 is “force by way of correction”. That's why our amendment is really precise about safety.

Ms. Marilyn Gladu: Further to that, I think Mr. Garrison is actually correct that we're not allowed to expand the scope of the private member's bill. With that in mind, then, to me, keeping section 43 as it is, knowing that the courts will interpret not just section 43 but also the Supreme Court's judgment upon that, will be important.

Is there anything else you would like to tell us in terms of expanding the scope of whom it covers? We've heard Mr. Housefather on including other people. I heard you clearly say parents and teachers, but you're not opposed.

Is that fair, Mr. Joly?

• (1145)

Mr. Sébastien Joly: Again, we represent teachers.

Ms. Marilyn Gladu: All right. I have the same comment from Ms. Yetman.

Thank you so much for your answers.

The Chair: Thank you very much.

We will now move on to Ms. Dhillon for five minutes.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Thank you, Madam Chair.

To our witnesses, thank you for being here today and for the important work you're doing.

Section 43 currently doesn't apply to nurses, child care workers or other professionals who deal with children regularly and who may need to use force to ensure a child's safety. These individuals are not disproportionately sued for using force. We're talking about reasonable versus unreasonable force. Why do you expect that teachers and parents will be unfairly treated if these professionals are not?

Thank you.

Ms. Heidi Yetman: First of all, I think it's really important to note that since the pandemic, violence in the classroom has gone up. The Elementary Teachers' Federation did a members survey in 2023, a year ago, and 80% of their members said that the number of violent incidents had increased. Teachers will experience upward of 50 instances of harassment or violence over the course of one year.

I also want to mention this. It may be a little bit outside or widening this a bit, but 80% of teachers are women. I think that's important as well, because it means that women are working in

very unsafe environments. As Tesa mentioned, we don't have the resources. There's systemic underfunding of education in the provinces. We need more training. We need more resources. Since that doesn't exist, if section 43 disappears, we're going to see, as we've said before, more problems of violence, because teachers will be reminded not to put their hands on children. We'll do more of these evacuations. I'm sure you've heard of these. It's where a child is having dysregulation and we have to evacuate the entire class.

Ms. Anju Dhillon: As my colleague Mr. Garrison has pointed out, this part really falls under provincial jurisdiction. We're talking here about protecting children from unreasonable force.

I'm very concerned as well about day cares. Children of two, three and four years of age cannot express themselves, and they are subjected to abuse like a pinch on the upper arm, a tug to the hair and things like that. It comes in the news, and there are sometimes horrific stories. How do we protect those children who are not able to express themselves? Can you please elaborate on that?

How come there should be an exception in the Criminal Code for the use of force to correct children's behaviour when we don't have such an exemption for any other class of people?

Mr. Sébastien Joly: Again, the exemption or the amendment we're asking for is for the sole purpose of ensuring a safe environment in the school setting. It's not to allow teachers to use force to correct students.

By the way, if there's a situation where, unjustifiably and not to ensure safety, a teacher, an education worker or an educator in a day care centre uses force to correct a student, it's unlikely that section 43 would protect them currently, with the 2004 realignment by the Supreme Court decision.

Essentially, what we're demanding with the amendment is really to ensure that those protections for the safety of students be maintained or be placed somewhere else in the Criminal Code, because, in the absence of this, all the legal experts' opinion is that we should advise our members not to get involved physically under any circumstances because of the risk of possible allegations and charges.

• (1150)

Ms. Anju Dhillon: As our witness Ms. Yetman has pointed out, most teachers are female. My mother was a teacher, and her four sisters were teachers, so I come from a family of educators.

Can you quickly tell us what tools could be available to protect these female teachers, other than having to change this legislation, which is really to protect children?

Thank you so much.

Ms. Heidi Yetman: This is going to sound crazy, but we need resources. It's not that crazy, actually. It has been years and years that our school systems have been underfunded.

The Chair: I'm going to have to interrupt now to allow the two remaining members to ask questions.

[*Translation*]

Mr. Fortin, you have the floor for two and a half minutes.

Mr. Rhéal Éloi Fortin: Thank you, Madam Chair.

We know that repealing section 43 could lead to an increase in possible charges against teachers. That is what you told us. However, at our committee, we also studied many Criminal Code provisions regarding certain groups within our society who are overrepresented in the legal system or the child welfare system. I'm wondering what effect repealing section 43 might have on those groups. Let's consider, for example, indigenous parents or parents from racialized groups, be they from the Black community or other communities.

Mr. Joly, in your opinion, would abolishing section 43 have an effect on these groups? If so, what would it be?

Mr. Sébastien Joly: I would be hard put to answer that question. However, protections included in section 43 also cover parents. I don't have statistics for specific communities, but it is possible that—

Mr. Rhéal Éloi Fortin: Since I only have two minutes, if you don't know, allow me to give the floor to Ms. Yetman or Ms. Fidler.

[*English*]

Ms. Tesa Fidler: It's the impact it would have on under-represented groups. I can speak as an Anishinabe person about what I've witnessed and what I've experienced as well. Due to the history and trauma that we've experienced, there's been a lot of family and community breakdown. Systems that have traditionally been in place no longer exist. There's a lot of intergenerational parenting that is happening. For example, my mother is raising her nine-year-old great-granddaughter, because my nieces are struggling with their own mental health and addiction issues.

When there is that intergenerational parenting happening and biological parents might be absent, there is right there the optics of what is considered healthy parenting or healthy family systems. When you think about child welfare and what is an imminent risk, those have been created by western systems. Even though we are doing our best to maintain and preserve family, it isn't happening. But we're doing the best we can.

Indigenous people are only 4% of the population in Canada. However, indigenous people make up 30% to 50% of our jails. It's incredibly disproportionate. We could say the same for Black people as well. It's a very disproportionate ratio. It would definitely have negative consequences.

The Chair: Thank you very much.

The last two and a half minutes go to Mr. Garrison, please.

Mr. Randall Garrison: Thank you very much, Madam Chair.

In the spirit of getting the yes and making sure there's no misunderstanding, I've listened carefully to what you have to say. I believe that both of your organizations are saying that in fact you do support the repeal of the existing provision, but that you need additional protections for teachers if that's going to happen. Is that correct?

Ms. Heidi Yetman: Absolutely.

Mr. Randall Garrison: Then that presents us with a challenge as a committee. I appreciate that you've made suggestions for those changes that need to be added, but I remain concerned, because as Ms. Gladu pointed out, we can't actually expand the scope in a committee. Only the House can do that, and it's very rare that it happens.

However, there are some ways in which we could get to the amendment. The government can, at any time, introduce legislation. If this private member's bill is moving forward, then the government could introduce companion legislation to make the changes you're talking about, or another member could introduce an additional private member's bill, although that process is of course longer.

Ms. Yetman, I don't believe the Canadian Teachers' Federation has had a chance to talk specifically about what kinds of changes you're looking for in other sections of the Criminal Code. I know you've sent us material on this.

• (1155)

Ms. Heidi Yetman: Our legal counsel has drafted an amendment that would be under section 265, proposed subsection 265(5). However, as I said before, I'm a teacher, not a legislator. I don't know where we go from here.

Yesterday, I was preparing for today and I noticed that New Zealand made an amendment in 2007 to their Crimes Act, which might be something this committee could look at. It had very similar language to Canada's language. It had wording similar to “force by way of correction”, which was changed to something different. It was a repeal and an amendment at the same time. The amendment was about the safety of children. That might be something to look at. That was done in 2007.

Our amendment is in our brief. It talks about “protecting the safety of the child” and “preventing the child from causing bodily or emotional harm to themselves or to other persons.” There is nothing here about corrective force. It's about protecting the child and making sure they're safe.

Hopefully everybody in the committee has received the document. If not, we'll make sure that you do receive that document.

The Chair: Thank you very much.

We're going to confirm that the documents were received and that we have the translation of them. They don't get sent out until and unless they're in both official languages.

With that, I just want to remind you that if you want to respond to anything you've heard today, or if you've been asked any questions that you were unable to respond to due to time constraints, we would be happy to receive anything in writing. Unfortunately, we decided our due date is tomorrow at noon. We are going to meet again on Thursday morning to see what the committee comes up with on this legislation.

I thank you again for appearing.

[Translation]

I thank the witnesses for joining us this morning.

[English]

I wish you a pleasant week.

We have some witnesses who are appearing in person, and I believe we have one by video conference. We will do the testing to make sure that everything works.

• (1155) _____ (Pause) _____

• (1200)

The Chair: Welcome back to the second hour.

We have three witnesses for the second panel.

As individuals, we have Dr. Lisa M. Kelly, associate professor in the faculty of law at Queen's University, and Mr. Marc Levasseur. Representing the Nova Scotia Teachers Union, we have Ryan Lutes, president. He comes from my constituency, Halifax West.

Welcome to all of you.

You have five minutes each to present your opening remarks.

I will signal when you have 30 seconds left. Because there are three witnesses today, I will probably interrupt when the time is up, to allow the members of the committee to have sufficient time to ask questions. If there are any questions that get posed to you that you don't have sufficient time to respond to and you would like to send us a written message, please do so through the clerk's office.

We will begin now with five minutes to Dr. Lisa Kelly, please.

Dr. Lisa M. Kelly (Associate Professor, Faculty of Law, Queen's University, As an Individual): Good afternoon.

Thank you for the opportunity to speak with you today.

My research and teaching at Queen's University's faculty of law focus on how the legal system affects young people—as victims and as persons charged with criminal offences—as well as their families and their teachers.

At the outset, I wish to state clearly, as previous witnesses have stated, that I share the goals of the sponsors of this bill: that is, to end the practice of the physical punishment of children and to promote their best care at home and in school.

That said, the question before Parliament is a specific one about the role of the law, and in particular the criminal law, in this area.

I wish to focus on three points in my opening comments: first, the TRC recommendation; second, the potential legal effects of re-

peal for families and children; and third, the demographics of parents and guardians most likely to be affected by repeal.

As everyone is aware, the TRC, in its sixth call to action, recommended repeal of section 43, and it did so to break with the legal and state systems that facilitated genocidal abuse against indigenous children in residential schools. In weighing repeal today, it's important to recall that section 43 is far narrower than it was historically. As you're aware, the Supreme Court of Canada read in significant limitations in 2004.

One of the potential impacts of repeal today is that it will contribute to a harsh culture of state intervention, including child removal, to which indigenous families and children are disproportionately subjected. In fact, I would argue that expanding criminal liability for parents may undercut recent initiatives to promote indigenous sovereignty over child protection, including the 2019 act, An Act respecting First Nations, Inuit and Métis children, youth and families.

This brings me to my second point, the potential legal effects of repeal. Canada defines assault in section 265 of the code very broadly to include any non-consensual physical contact beyond a de minimis level. How will the situation of repeal change this legal baseline?

Let me give you a brief example. Let's suppose a mother is placing a five-year-old in a car seat and the child keeps kicking at the parent and insisting they want to ride without a car seat. After struggling with the child and receiving several kicks to the chest and the chin, the mother strikes the child twice across the shins and instructs the child not to resist being placed in a car seat now or in the future. What are the potential consequences for the parent and the child if this incident comes to the attention of police, and how might that attention even happen?

The parent could be in a high-conflict divorce or acrimonious family situation, where the other parent will be interested in pursuing this as a criminal matter, or let's imagine this is a racialized family, a family recently arrived in Canada, or a first nations family that, for unrelated reasons, is subject to monitoring by child welfare. In a visit from a child welfare worker, the child will be interviewed separately from the mother—this is standard practice—and asked if the parent ever hits the child. The child might then explain that the mother hit their legs a few days ago getting them into the car.

It's very possible with repeal that at such a point there would be some involvement by police if child welfare workers and others in authority are aware that Parliament has repealed section 43 and such an incident constitutes a criminal assault.

This brings me to my third and final point, who is most likely to be subject to punitive intervention? This intervention may take a range of forms. It may mean at least some contact with police, perhaps a warning but perhaps a charge; perhaps a diversion by the Crown but perhaps also an assault charge that proceeds and to which the parent may ultimately plead guilty. That's statistically by far the most likely outcome when a charge does proceed. The parent may ultimately be given a conditional discharge that allows them to avoid a criminal record if they abide by certain conditions, but they may also be given a conditional sentence to be served in the community for which they will have a criminal record.

• (1205)

I'll wrap up now.

The Chair: You'll have a chance to respond, and you'll probably get many questions.

Thank you very much.

[*Translation*]

Mr. Levasseur, you have the floor for five minutes.

Mr. Marc Levasseur (As an Individual): Thank you.

My name is Marc Levasseur. I am Canadian by birth, descended from Western and Indigenous ancestors from the Algonquin and Mi'kmaq nations. As an adult, I was traditionally adopted by an elder of the Atikamekw nation, and I have been living in relation to the Wemotaci community since then.

Among my accomplishments, I hold a master's degree in theological studies with a concentration in Indigenous studies, and I am in the process of completing a bachelor's degree in social work. I also worked as a correctional officer with the Correctional Service of Canada, as well as a spiritual and social worker within Indigenous communities.

Since 2017, I've been on disability due to the trauma I experienced during my childhood.

Section 43 has existed for 132 years in the Criminal Code with the purpose of protecting Western Christian ideological excesses that, for centuries, asserted that a child is born tainted by sin and must undergo punishment to atone for their faults.

While Western Christianity considers it morally justified to strike children, such a concept did not exist among First Nations. In Atikamekw, a young child is referred to as "*awashish*," which means "the little being of light," in reference to their purity. This is why, for Indigenous children who experienced educational violence in residential schools, the shock was so brutal.

From its inception to today, this section embodies the colonial legacy of educational violence in Canada. My biological parents told me about the educational violence they endured at school from teachers, and my adoptive mother was forced to attend Indigenous

residential schools, where she was subjected to the regime of corporal punishment that prevailed in those institutions.

This section has a lot of blood on its hands and is an anachronism completely at odds with current culture and educational philosophies promoted in Canada. The legacy of this section dates back to a time when it was legal, enshrined in the Criminal Code, for men to have the right to use force to reasonably beat their wives, and when it was common to penalize adults with various forms of corporal punishment in prisons, including the use of a wooden paddle and the strap.

These abuses towards adults disappeared from practices and laws in the 1960s and 1970s, but they are still allowed for children. Our society has chosen not to give children the same level of protection as adults. It is time to correct this, because even today, despite the provisions of the 2004 Supreme Court ruling, thousands of children here in Canada are growing up in environments that promote educational violence with complete impunity, because the content and spirit of section 43 align with it.

For my part, since birth, I have faced an environment of systemic educational violence within evangelical Baptist communities. While some Christian groups put an end to the excesses of educational violence, evangelical Baptists, like others, continue today to defend these practices and are among those advocating to maintain and strengthen section 43.

In our families and within the church, we were taught that being hit on the buttocks with a wooden paddle or strap was normal and for our own good. For them, it is a divine mandate, and they believe that one who loves their child must punish them. As a society, we should consider hitting a child's buttocks as an assault of a psychological, physical and sexual nature. Yet, this act is considered educational and still protected under section 43.

I endured these systemic abuses from my parents and church school staff. For various and trivial reasons, such as turning around in class, at the ages of four, five and six, I received paddle strikes in the church basement. There were about 90 students in this church school.

Receiving violence from people from whom I should have received love, security and kindness led to a breakdown in emotional bonds, attachment difficulties, a toxic view of myself, anger and violence I had to fight and still fight today. As a young adult, I struggled with substance abuse and homicidal ideation. I lived with symptoms of complex post-traumatic stress so intense that I required psychiatric care.

• (1210)

I have been in therapy for 10 years now and take medication every day.

I often dream about what my life could have been had I not gone to a school where violence was used and how I could have contributed to our society, instead of costing society money, given the treatment required for my condition.

The Chair: Mr. Levasseur, I'm sorry, but I have to interrupt you. You will be able to tell us more when you answer questions from committee members.

Thank you very much.

[*English*]

Our third witness is Mr. Lutes, president of the Nova Scotia Teachers Union.

You have five minutes, please.

Mr. Ryan Lutes (President, Nova Scotia Teachers Union): Thank you, Chair, for the opportunity to speak today.

My name is Ryan Lutes. I'm the president of the Nova Scotia Teachers Union. We represent approximately 10,000 teachers and educational specialists in Nova Scotia's public school system.

I'd like to acknowledge that I live and work on the unceded territory of the Mi'kmaq people.

Teachers are absolutely committed to reconciliation, and we support 100% the Government of Canada's commitment to enact all TRC calls to action. The NSTU is committed to this support, while also being committed to keeping our schools and classrooms safe places.

As such, the NSTU opposes Bill C-273 if it is passed without other amendments to the Criminal Code. This is simply because a repeal without amendment will lead to more unsafe classrooms. Student violence against other students, against themselves and against educators is on the rise. Now more than ever, we need laws in place to help teachers ensure that schools are safe for everyone. It is important that the views of teachers are reflected in your deliberations and decisions. Repealing section 43 is extremely important, but we have to get it right. Teachers on the ground in the classrooms of our country have not been afforded meaningful consultation, and teachers do not support the bill passing unamended.

As the NSTU president, I'm first and foremost a teacher. I'm a high school math teacher, and I can tell you that no teacher wants to physically intervene. As I think Mr. Caputo said, no one gets up in the morning wanting to break students apart, but unfortunately that need is increasing. I personally have been in situations where I've had to physically intervene to restrain students, and without me being able to do that, there may have been a violent assault in the halls of my school.

Unfortunately, this is not a unique situation. Numerous situations arise in the school context that require a teacher to respond. These responses might include a teacher placing their hands on a student's shoulder to guide them away from an altercation or restraining or redirecting a student to protect student safety. Under section 265 of the Criminal Code, these everyday actions could be subject to prosecution. The repeal of section 43 would put a chill on teachers trying to do their jobs. It may cause them to stop from ever intervening in difficult situations, and this will compromise the safety of our schools. The unfortunately reality is that 92% of Nova Scotia's teachers have witnessed violence in their schools and classrooms, and 55% have either been the victim of violence or been threatened with violence.

A school safety amendment would ensure the specific protection of teachers and educational staff within the Criminal Code in situations where reasonable physical intervention is necessary to protect the safety and well-being of our students, teachers and education workers across our country.

The Canadian Teachers' Federation draft language, which the NSTU supports, seeks to amend section 265 of the Criminal Code. The amendments would honour the Truth and Reconciliation Commission's calls to action while also ensuring that teachers can promote safety in our classrooms and schools and protect the safety of students, which I would remind the committee is the scope of this. The scope of this bill is about protecting students, and that's what teachers seek to have amended through this. Again, this is near and dear to our hearts, to protect students. That's what we all want.

It's important to recognize that pursuant to Nova Scotia's Education Act, and likely other acts in other provinces, teachers have the legal duty to protect students and to maintain safe classrooms. In order to do that, we must have protections in the Criminal Code that allow us to use reasonable force only when necessary to ensure that our classrooms are safe. Without a school safety amendment, the NSTU anticipates that there would be an increase in the number of assault charges filed and prosecuted. The NSTU would have to advise Nova Scotia teachers, as a precaution, not to physically intervene in the situations noted above. This would result in more injuries and more severe injuries to students, and it would result in schools being less safe.

One thing that I think has come out here is that teachers need to be able to act reasonably without doing a risk-reward analysis of section 265. We're not lawyers. As a teacher, I need to be able to grab a student who's running out into the street. I need to be able to pull on someone's hand if they're running towards an altercation, and I need to be doing that without weighing the risk of common-law defences or doing some legal analysis in my head. I need to be able to act reasonably in situations, just as a reasonable, loving parent or teacher would, and that's what we're really asking for today.

● (1215)

Thank you for having me here. I look forward to responding to your questions.

The Chair: Thank you very much.

We will now move to our first round of questioning. We will start with six minutes each.

We will begin with Mr. Tako Van Popta.

Mr. Tako Van Popta (Langley—Aldergrove, CPC): Thank you, Madam Chair.

Thank you to all of our witnesses, Mr. Lutes, Mr. Levasseur and Dr. Kelly, for being with us here today and helping us through this very important draft legislation.

Dr. Kelly, I'll start with you. We're talking about possibly repealing section 43 of the Criminal Code, which is the codification of the common-law defence available for teachers and parents to charges of assault against children.

The Supreme Court of Canada weighed in on this issue 20 years ago. The chief justice at that time said this about section 43, which they defended as being constitutional:

The reality is that without Section 43, Canada's broad assault law would criminalize force falling far short of what we think is corporal punishment, like placing an unwilling child in a chair for a five-minute timeout.

Dr. Kelly, we heard from earlier witnesses, including the sponsor of this bill, about horrific stories of children being hit in the face, being hit with sticks, physical abuse. I would like you to comment. Does section 43 protect that kind of behaviour?

• (1220)

Dr. Lisa M. Kelly: No, it does not. As you've alluded to, in 2004, the Supreme Court of Canada read in a series of limitations as to what would constitute reasonable correction. When it upheld section 43, it made clear in that decision that, in the case of teachers, corporal punishment of any kind is not included in section 43, only forms of restraint in cases, for instance, of protecting themselves or other students. In the case of parents, the use of instruments, blows or strikes to the head, physical discipline of children under two or teenagers were all read out of the ambit of section 43.

The only slight caveat is that, with respect to, for instance, grabbing a child if they are about to run out onto the street, it's not my view that it would be criminalized if section 43 was repealed. There would still be necessity defences in the case of an immediate action to protect a child, but the example that I gave of a strike, for instance, to the leg of a child resisting in a car seat would be within the ambit of section 265 and would not be captured. However, the more horrendous examples that you gave have indeed been read out.

I have reviewed the case law since the Canadian Foundation case was decided, and we simply do not see courts today upholding the kinds of egregious abuse that they did prior to 2004.

Mr. Tako Van Popta: Thank you for that.

If section 43 were to be repealed—in other words, if this private member's bill does pass through Parliament—in your opinion, would the common-law defence kick in again? What would be the message to the public of repealing section 43?

Dr. Lisa M. Kelly: The defences that would continue to exist, and they continue to exist right now alongside section 43, are those that exist generally for any types of physical contact with anyone, not specific to children. That would include self-defence, a force

that's used in defence of one's self or a third party in a case of imminent danger, and the defence of necessity that I referred to, when you take action in an urgent moment, for instance to prevent someone from running onto the street. Those would remain. However, outside of that, non-consensual touching beyond a de minimis level, beyond a minimal threshold, would be considered assault.

I think proponents of repeal hope that the message will be that all forms of physical discipline are wrong and unlawful, but I think we also have to be attuned to the message that will be sent to police, child welfare workers and prosecutors, which will be that—like my example of striking the child's leg in the car seat—all of those forms of contact are assault, and for particular families, especially those most marginalized, I would expect to see further cases of that kind that actually go through the system.

Mr. Tako Van Popta: I have one quick question. We had witnesses at our last meeting who pointed out that Parliament never responded to the 2004 decision of the Supreme Court of Canada, and that perhaps it is time to expand or further define the section 43 defence by codifying what the Supreme Court said. For example, it clarified that force must be sober and reasoned, and must not be applied to a child under two or over 13. Those are among the items that were listed in the Supreme Court of Canada decision.

What would you say about that? Would it be a good idea to have, for example, a section 43.1 that explains that?

• (1225)

The Chair: We're going to have to wait for that response in order to let other members have their turn. I'm sorry about that.

Madame Brière, please go ahead for six minutes.

Mrs. Élisabeth Brière (Sherbrooke, Lib.): Thank you, Madam Chair.

Thank you to all of our witnesses.

[*Translation*]

Mr. Levasseur, would you like to take a moment to finish your opening presentation?

Mr. Marc Levasseur: Actually, I was finished.

Mrs. Élisabeth Brière: Okay.

Why is it so important for you to take a stand today?

Mr. Marc Levasseur: There are three things I would like to say.

First of all, I was subjected to violence. Despite all the efforts I have made in my life, I am still scarred on the inside and this has had profound consequences. I have been diagnosed with mental health issues and my life is limited. I take medication every day just to control the debilitating levels of adrenalin and cortisol in my body. However, I don't think I'm a person who lacks intelligence or abilities. I could have been a good citizen and contributed to society. Instead, I have been incapacitated since 2017 and I do not know to what extent I will be able to recover.

To illustrate what section 43 means, I have brought an exact replica of the paddle that was used to beat us at the church-run school. That was proven in court. This paddle is the symbol of what section 43 meant from 1892 to 2004. I understand that the Supreme Court issued a clarification on this section in 2004, but that is indeed what section 43 was designed for. This wooden paddle is the exact symbol of what this section represents. I know that limits were set in 2004 by the Supreme Court, but that does not change the fact that groups of Christians, such as evangelical Baptists, among whom I was raised, used this object until 2004. Now they recommend using your hand. They promote this practice, they provide training and, for religious and ideological reasons, they still tell parents that if they love their children, they should be hitting them.

Personally, I find it absurd that an adult man has the right to spank his three, four, five or six-year-old daughter nicely and reasonably, regardless of age. If an adult did this to someone else without their consent, it would be deemed sexual assault, but a man can reasonably strike his 11-year-old daughter's buttocks. This is an aberration.

As long as section 43 is in force, these religious groups will be able to continue this practice based on the same ideological grounds, as they have been doing since colonization. They can still use the church pulpit to tell parents that they have to punish their children and hit them, using all kinds of biblical verses as a justification.

That legacy has also had an impact on first nations, as you know. It's not part of first nations culture. The word "*awashish*", which means "little being of light", stands in stark contrast to the Augustine doctrine of western Christianity, which says that the child is born in sinfulness and that it is morally justified for a parent to strike his or her child. That's not the case in aboriginal culture.

I've heard people ask whether repealing section 43 could lead to possible convictions for parents, to which I would say that at some point, the cycle has to be broken. The cycle of educational violence in Canada has been enshrined in law for 132 years. At some point, we have to break that cycle. We're at a stage in society where fewer and fewer parents are doing this. It's becoming less and less customary and less and less accepted. The colonial legacy of this section of the act must end.

Mrs. Élisabeth Brière: You heard the various comments made by the other witnesses. You may also have heard those of the witnesses who preceded you in the first hour of the meeting. What is your reaction?

In particular, Ms. Kelly told us that repealing section 43 of the Criminal Code could have unwanted effects. For example, when a

couple divorces, one of the two spouses could claim that the other used corporal punishment.

• (1230)

Mr. Marc Levasseur: First of all, I would say that it is a chicken-and-egg situation, where we try to determine which of the two comes first. If the right to use corporal punishment were removed, over time, children would be raised in environments that are less and less violent and would be less likely to engage in such behaviours as adults.

Furthermore, I deplore the lack of consideration for the entire social intervention and child welfare community. I'm pursuing a degree in social work. I recently spoke with one of my professors who worked as an evaluator for more than a decade for social services in Quebec. He said that, at present, more than 80% of parents from whom children are taken are not subject to any criminal charges. And yet these are children whose development has been proven to be compromised because of the corporal punishment they suffer, which leaves scars that will stay with them for the rest of their lives. Currently, these parents are getting off scot-free.

The Chair: Thank you very much, Mr. Levasseur and Ms. Brière.

I now give the floor to Mr. Fortin for six minutes.

Mr. Rhéal Éloi Fortin: Thank you, Madam Chair.

Thank you to all the witnesses.

Mr. Levasseur, your testimony is moving. Personally, I have a great deal of sympathy for what you experienced in the past, and I am convinced that everyone agrees on that point.

That said, you can correct me if I'm wrong, but what I gather from your testimony is that you are opposed to the use of corporal punishment, and I think you are right.

You've probably heard from previous witnesses at this committee about how useful it is for a teacher, for example, or even a parent, to use reasonable force to control a child, to separate two children who are fighting or things like that. It seems to me that we must clearly distinguish between corporal punishment and the use of force, which may at times be necessary in the education of children, by anyone in a position of authority, be it a parent or a teacher.

I would like your opinion on that. Should we proceed with caution and make a distinction between corporal punishment, on the one hand, and the use of reasonable force to ensure the safety of children or their education on the other?

Mr. Marc Levasseur: First of all, I think section 43 needs to be removed because of its legacy, because it justified the use of force to correct a child.

Second, I'm a parent myself and I'm also a former correctional officer. My current life partner is a special needs teacher. So I am very aware of the reality of having children and the need to use force. I often have discussions with my partner, who sometimes needs to use force. Personally, I have reservations about that, but if it is deemed necessary, it should really be subject to a separate section of the act. My reservations are based on the fact that the Criminal Code already contains provisions governing the use of force in cases where a person presents a danger to themselves or others, disturbs the peace or presents a danger to property.

I used force as a security officer. When I was a nursing student, I worked in a hospital setting, and force was used regularly to restrain people. I have never heard of anyone being criminally charged for using force in a hospital setting. I've used force in a correctional setting many, many times. I've used it in my personal life. I even used it in civilian life. Indeed, as a citizen, you can use force to intervene in a fight or when you see a person being assaulted. I've had situations where I've had to tie someone up and detain them. I was never charged since there was no justification. Our legislation is sufficient in this area.

Now things are different in the case of a child. Let's take the case of a child with a mental disorder or a different perception of reality, such as an autistic child. If he goes onto the street and poses a danger to himself or to others, our current legislation gives someone the right to use force to protect him. However, if that same child started running in a field, where he does not pose a danger to himself or to others, and someone ran behind him and tackled him with great force, it would be a matter of debate.

• (1235)

Mr. Rhéal Éloi Fortin: I would like to discuss another sensitive issue with you, Mr. Levasseur.

You told us what a child is called in indigenous communities. That was most interesting. I don't remember the exact word, but it means "little being of light".

This committee has studied many bills that have shown us that certain groups are currently overrepresented in our justice and penitentiary systems. I'm wondering if repealing section 43 would have an impact on that overrepresentation.

What, in particular, would be the impact on indigenous communities, of which you are a representative? I have a good idea of what you are going to tell me, but I would still like to hear your answer, Mr. Levasseur.

Mr. Marc Levasseur: I don't believe that there will be any overrepresentation if section 43 were repealed.

Will it enable us to do more on the prevention side or to draw a much more defined line to determine if force used on a child constitutes a violent act or if it is justified?

Mr. Rhéal Éloi Fortin: I have only about 40 seconds left and I would like to address a related matter.

How will repealing section 43 lead to improvements for indigenous communities? I understand that there is a moral aspect and a whole historical context related to section 43. You've already spoken about it and we won't revisit that right now. Apart from that,

how will repealing section 43 help indigenous communities at present?

Mr. Marc Levasseur: Apart from the legacy aspect, it's really about drawing a line to break the cycle of violence that has been established due to corporal punishment being meted out to children in Canada. Those values are still being passed on, because there is a very large grey area that allows that to happen.

Mr. Rhéal Éloi Fortin: Thank you.

The Chair: Thank you very much.

[English]

Six minutes go to Mr. Garrison, please.

Mr. Randall Garrison: Thank you very much, Madam Chair.

I'll start by thanking Mr. Levasseur for bringing his very powerful personal testimony. I think that, as parliamentarians, we don't often credit the bravery and the difficulty for people to do that, so I thank him very personally.

However, I think you've done something else very important in addition to that, and that is that you've taken us back to the first causes. Why did we ever decide that violence against children was acceptable, as non-indigenous Canadians? I'd like you to say a bit more about that difference, which you talked about in your opening statement, that causes us to say, even today, "You can't use force against adults, but with children it's somehow okay."

Mr. Marc Levasseur: Do you mean specifically in an indigenous context?

Mr. Randall Garrison: I mean the contrast between non-indigenous and indigenous approaches to that question.

[Translation]

Mr. Marc Levasseur: You have to go back to our colonial history to understand that contrast.

According to the Augustine doctrine within Christianity, Catholics baptize children at birth because they are born in a state of sinfulness. When children are born, they are seen as bad with madness in their hearts that has to be beaten out with the rod. That's what the scriptures say.

That belief was predominant across the western world. It even goes back to the Middle Ages. That legacy of the church was passed down here in America at the time of colonization.

Indigenous people had a very different vision of education and children. In the western view, parentage was very hierarchical. Everything started with the father, the woman was his subordinate and the children were the subjects of the parents, their chattel even. Instead of that triangular vision, indigenous people saw a circle. The child was seen as an *awashish*, which means “little being of light”. The light also represented the energy of the creator. For indigenous people, not only was the child a symbol of purity, but a child's birth was the miracle of life. The child was literally a reflection of the creator who came into this world, but he was not the creator himself. I want to make that clear so as not to offend Christians; that's not it at all. In any case, indigenous people saw purity in the child. It was not seen as a chattel.

What the residential schools did was simply take children who had been raised with a certain view of the world that was completely different from the western world view, one that had its good and bad aspects but was beautiful, and impose a new world view on them. The children were told that their ancestors were pagans, that they did not know the one true god and that they could be subjected to much corporal punishment because of the bad in them. That violence was beaten into them, just as I was imbued with violence as a child when I was hit with a stick. I was imbued with a certain view of the world, just as the children in residential schools were. Afterwards, these children returned to their communities carrying the violence they had suffered inside them.

• (1240)

[English]

Mr. Randall Garrison: Thank you, Mr. Levesseur.

I want to turn, with the little time I have left, to Dr. Kelly and the third concern she raised about the impacts on marginalized people of repealing this section. I'm not quite sure that I understood your concern there, Dr. Kelly. Can you maybe go through that again with me?

Dr. Lisa M. Kelly: Sure, absolutely.

We know that, in both the child welfare and the criminal legal system in Canada, indigenous people, racialized people, especially Black people, and poor and working-class people are overrepresented, and they're oversurveilled compared to their affluent, whiter counterparts.

The concern is not that if section 43 is repealed, in the morning we will see swaths of parents being arrested across the country, but that those who are already within more heavily surveilled systems will have these types of incidents come to the attention of state authorities and worked through the criminal legal system at some level, and that there will be gendered, racial and class elements. For instance, we know that in Ontario, 86% of cases of child maltreatment found to have been verified as of 2018 involve biological mothers, and 90% involve female carers. We also know that uses of physical discipline or non-consensual touch are more likely to occur in homes where there is greater economic stress, in single-parent households, etc.

I believe that we will likely see a continuation of these forms of inequality. I think it's important to note that, yes, this defence is a colonial one, but the entire Criminal Code is a colonial construct

that was imposed in the late 19th century, and it's that part of the system that will be aimed at this kind of contact.

The Chair: Thank you, Dr. Kelly.

We will now move to our second round, with Mr. Moore for five minutes, please.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Madam Chair.

Mr. Levesseur, Mr. Lutes and Dr. Kelly, you've all given fantastic testimony today. This is a great panel. I'm sure we could go on and on, because you all have so much to offer in this discussion. We really do appreciate it.

When we look at section 43, we can look at it in the historical context, but we also, as we sit here today, have to look at the reality of what the law does and does not do here in 2024. We are dealing with section 43 now not as it is written in the code but as it has been significantly interpreted and narrowed in a leading Supreme Court of Canada case. Had the case not existed, Parliament itself may have taken similar action.

Dr. Kelly, I'll address this to you. When the bill was introduced, the proponent mentioned in their opening remarks some actions that clearly.... My view is that they fall outside the scope of section 43, but I want to get your opinion on it. An example is punching or slapping a child in the face. Do you think there's a defence in section 43 for that, as interpreted by the Supreme Court?

• (1245)

Dr. Lisa M. Kelly: No, I do not.

Hon. Rob Moore: What about paddling a child or striking a child with an object?

Dr. Lisa M. Kelly: No, I do not.

Hon. Rob Moore: What about slapping someone and leaving a bruise on their cheek?

Dr. Lisa M. Kelly: No.

Hon. Rob Moore: We also know that the court narrowed the application of section 43 for correction to those who are two and over and not yet teenagers.

What about teachers administering corporal punishment? Does section 43 as interpreted by the Supreme Court in this leading decision—section 43 as it appears before us in Canadian law—allow teachers to administer corporal punishment and be protected by section 43?

Dr. Lisa M. Kelly: No.

Hon. Rob Moore: I thank you for your quick answers, because I think that's the reality that we're dealing with here today. There was a reality before, but then there's the reality in the law, and that's what, with this private member's bill, we are vested with today.

I think I've seen some of the dangers of simply abolishing section 43 that have been highlighted. Mr. Lutes, you mentioned—and we heard previous testimony on this—the chilling effect it could have on teachers when it comes to breaking up a fight. As a parent, I find that remark kind of horrifying, when you think someone is being beaten by a classmate or by a couple of classmates. You only have to look on your social media to see that this is happening all over. It's being posted. I know you're from Nova Scotia. I'm from New Brunswick, but we're seeing this across the country and internationally. There are videos of fights at school. It's not an easy environment that teachers are in.

Can you speak to this chilling effect? What message would you as a leader be sending to your teachers if this protection was not there?

Mr. Ryan Lutes: Absolutely. Thanks for the question.

First off, I want to say that the NSTU opposes violence and corporal punishment against children, full stop. That is not what we're speaking to.

I also agree with Monsieur Levasseur that it's really important to repeal section 43. It's just important to get it right. I appreciate the colonial legacy that section 43 has brought to us. We have to do away with that. Section 43 should be repealed, but it should be done while at the same time protecting teachers in schools.

The unfortunate reality is that our schools are more violent than they were, and that's not a reality that I want. I have two kids, and that's not the reality I want for them. I also want their teachers to be able to protect them and keep them safe. I want them to be able to do that without doing a mental calculus of whether they think the criminal law is going to protect them or not.

I think we can do both. I think we can repeal section 43 and honour the Truth and Reconciliation Commission, while also amending the Criminal Code to enable teachers to keep their kids safe at school. That's what we want. At the end of the day, parliamentary procedure is not my expertise—I'm a math teacher. That's where we look to you, but if we can't get this right... I think that's where we have to put our efforts. We have to put our efforts into doing both things at once, and I believe this committee and the esteemed folks around this table can do that. You can repeal section 43 while also ensuring that teachers and schools have the tools they need to keep our kids safe.

I would just implore the folks around this table to go back and do both of those things. To do one of them without taking into account the other would put our teachers and our schools at risk.

• (1250)

The Chair: Thank you, Mr. Lutes.

We will now move on to Mr. Maloney, for five minutes, please.

Mr. James Maloney (Etobicoke—Lakeshore, Lib.): Thank you, Chair.

I agree with what Mr. Moore just said. This panel has been very informative, as all the panels have been on this issue, frankly.

I think Mr. Moore used the term “a dose of reality” or “being realistic”. This is the part I'm struggling with. We can all give exam-

ples around this table of extreme cases where a change would not work or would work or where the status quo doesn't work. We need to parse that out and get to the core of the issue.

Mr. Lutes, the Nova Scotia Teachers Union falls under the jurisdiction of the Canadian Teachers' Federation, I'm assuming.

Mr. Ryan Lutes: Yes, we are a member of the Canadian Teachers' Federation.

Mr. James Maloney: Okay. Ms. Yetman said in her testimony earlier today—and I think you were here—that if section 43 is repealed, it would be their advice to teachers not to touch or lay a hand on any students. Do you agree with that approach if that's what happens?

Mr. Ryan Lutes: That is what our legal experts are saying. That's not a world I would want to live in, but that would have to be our advice for teachers moving forward.

Mr. James Maloney: Okay.

I want to pick up on something Mr. Moore just said. Let's assume this is a grade 7 class. You're the teacher, and Mr. Caputo and Mr. Moore start to beat me up. If section 43 is repealed, are you going to tell your teachers that they have to stand by and watch that happen and not inject themselves to try to break up the fight?

Mr. Ryan Lutes: I certainly hope not. What our legal—

Mr. James Maloney: This is not about “hope”. This is a very realistic question, because the evidence is that they will tell their teachers not to touch their students. I'm giving you a real scenario. It happens in classrooms all the time—

Mr. Ryan Lutes: Absolutely.

Mr. James Maloney:—so what would you do as a math teacher in a grade 7 class if those two guys started beating me up?

Mr. Ryan Lutes: Let's just be clear. What our legal experts are saying is that our advice would have to be not to lay your hands on kids, period. What I would do as a math—

Mr. James Maloney: What authority are they relying on when they tell you that?

Mr. Ryan Lutes: Do you mind if I finish answering the question? I think that's really important.

What I would do as a teacher in that class would be to intervene. I would find someone to intervene, but I don't want our teachers to have to go through some nuanced legal analysis. I want them to be able to react reasonably in the moment to keep kids safe, and that's where legal experts have said that without section 43, we would be putting teachers at risk. I don't want to live in that world. I want to live in a world where the teachers can intervene reasonably to keep kids safe and know that they're protected.

Again, I really want to be clear, because our position is very nuanced. Section 43 should be repealed. At the exact same time, additional protection should be given so that teachers in schools have the tools in their tool box to keep kids safe. We shouldn't be doing one without the other. Section 43 should be repealed. At the same time—and it's really important that it happens at the same time—we must include the school safety amendment to ensure that teachers are not prosecuted for very reasonable interventions to keep kids safe.

Mr. James Maloney: I don't disagree with you, Mr. Lutes. Unfortunately, I think perhaps the position might be overnuanced and overanalyzed legally, to be honest, because I don't think there's a scenario where a court is going to hold you responsible for breaking up a fight and protecting one student from two other students or one other student. I don't think the repeal of section 43 would create that exposure. I think you would still be allowed to do your job in the same way you are now. Section 43, as we've heard time and time again, was introduced at a time and place.... It is entirely different now. It's entirely different from what it was prior to the Supreme Court of Canada's decision.

I want to move over to you, Dr. Kelly. Let's assume that section 43 is repealed, and let's assume that a teacher is charged with an offence, as they could be now because I don't think students, teachers or parents know that section 43 exists until they hire a lawyer in a particular situation. Do you not think that the Supreme Court of Canada, as they laid out in their decision, would still provide guidance to courts in analyzing a particular set of facts when a teacher is put in a position where he has to defend himself against an assault charge?

Dr. Lisa M. Kelly: Yes, absolutely. If a teacher or anyone else is charged with an assault, and there is a need to apply or interpret section 43, a court does so in accordance with—

• (1255)

Mr. James Maloney: No, no. I'm saying that in the absence of section 43, that would still provide guidelines to judges who are reviewing the facts of a case against a teacher.

Dr. Lisa M. Kelly: Well, in the absence of section 43, you would be interpreting the contact as you would under general section 265 assault jurisprudence.

Mr. James Maloney: Are you saying that the Supreme Court case would have no bearing whatsoever? Is that your position?

Dr. Lisa M. Kelly: That's correct.

The Chair: We will now move to our last two questioners.

Monsieur Fortin, you have two and a half minutes.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you, Madam Chair.

Ms. Kelly, I would like to take these two minutes to ask you some questions, if I may.

What I gather from all the testimony is that corporal punishment should be prohibited and no longer authorized by section 43, even though we all agree that, according to the Supreme Court decision, it is already prohibited.

Would amending section 43 to prohibit corporal punishment and the use of violence, excluding the use of reasonable force to ensure the safety of children and third parties, as well as the education of children, seem reasonable to you? This would mean prohibiting corporal punishment and violence, but allowing those in parental authority to use reasonable force to keep children safe and educated.

[*English*]

Dr. Lisa M. Kelly: One possibility would be for an amended section 43, or a new provision if section 43 were repealed, to actually codify, as one of the members said earlier, the limits and the narrowing that the Supreme Court undertook in 2004 as a rewritten provision, so that anyone who picked up the code would be aware of the limits as they exist right now.

Is that the question? That could absolutely be done as an amendment to section 43 or perhaps as a new defence.

[*Translation*]

Mr. Rhéal Éloi Fortin: I only have a few seconds left.

Yes, you understood the question, Ms. Kelly. I agree with you, but apart from the legal aspect as to whether this would be a reasonable codification or not, I want to hear your opinion on the substance of the matter.

In light of your expertise, would it be a good idea to allow the use of reasonable force for child safety and education purposes, while prohibiting corporal punishment?

[*English*]

Dr. Lisa M. Kelly: Yes. I think in some of the situations that have been raised, in an educational setting or otherwise, there may be instances where, for the protection of students, a teacher will want to intervene. It may be an intervention that wouldn't be fully captured or excused by the current law of self-defence.

I think there are some unique considerations with respect to young people that don't always apply to, for instance, adult-to-adult relationships.

[*Translation*]

Mr. Rhéal Éloi Fortin: Thank you very much.

The Chair: Thank you very much.

[*English*]

For our last two and a half minutes, we will go to Mr. Garrison, please.

Mr. Randall Garrison: Thank you very much, Madam Chair.

This is the only advantage to being the fourth party: Quite often I get the last question.

I just want to say thank you to the teachers' federations for assigning us homework as members of Parliament to go along with this private member's bill. I do think it raises important points and concerns.

I want to end with a question for Mr. Levasseur, who was very eloquent on both the historical harms and the current harms of the existence of this.

Mr. Levasseur, I wonder if you could talk a bit about what you think the impacts of repealing this section would be in terms of reconciliation and breaking the cycle of violence in families.

[*Translation*]

Mr. Marc Levasseur: First of all, repealing section 43 would send a message indicating that these things were wrong.

Personally, I have known about this article since I was young, but most of the people around me do not. They have no idea. Even in the field of social work, we talk to people about it and they are surprised to learn that it still exists. And yet, these are people who are involved in social work.

I've known about section 43 since I was a child. It gave my parents and educators the right to use corporal punishment.

We've heard people say that corporal punishment has been prohibited since 2004. That's not true. It was restricted, but not prohib-

ited. Canadian law still does not say that corporal punishment is prohibited and that it is wrong. The law still states that it's fine within reason. The fact remains that, even today, it is reasonable that a man can strike his little girl's buttocks. That is still allowed under section 43.

We have to send the message that such behaviour is wrong. It is important to state that it was wrong and a bad cultural practice to subject children to this kind of violence in residential schools and day schools.

● (1300)

The Chair: Thank you very much.

[*English*]

Thank you very much to our witnesses in the second panel. You have given us a lot of homework and many things to think about over the next few hours.

Thank you very much to those who have come in person. Thank you very much, Dr. Kelly, for sharing your legal expertise with us.

With those few words, we will conclude. We will see everybody Thursday morning.

Thank you very much.

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