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• (0820)

[English]

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

I have one small item before we start the normal meeting. That is to approve the budget request for the study we are starting today on Bill C-273, which has been circulated to all members.

Ms. Marilyn Gladu (Sarnia—Lambton, CPC): I move a motion to approve it.

The Chair: Thank you, Madame Gladu.

(Motion agreed to)

The Chair: That's unanimous. Thank you so much. I love this. I hope it will continue throughout the morning.

Welcome to meeting number 100 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 (Corinne's Quest and the protection of children).

Today's meeting is taking place in a hybrid format, pursuant to the House order of June 15, 2023. Members are attending in person in the room and remotely using the Zoom application. Those on Zoom have been tested for the sound, and it is in order.

First, I want to welcome Peter Julian, the member of Parliament for New Westminster-Burnaby and the sponsor of Bill C-273.

Welcome to the committee. You have five minutes to present to the committee, which will be followed by questions, in the normal course, from members of the committee.

[Translation]

Mr. Julian, the floor is yours.

Mr. Peter Julian (New Westminster—Burnaby, NDP): Thank you very much, Madam Chair.

To begin, I would like to say that we're meeting on the unceded traditional territory of the Anishinabe Algonquin people. It's extremely important to recognize this because we're talking about the Truth and Reconciliation Commission's call to action 6. So it's extremely important to take that into account at all times.

[English]

The purpose of Bill C-273 is to repeal section 43 of the Criminal Code, which gives justification to use “force by way of correction” towards children. Section 43 was codified in 1892, having descended from English common law, which allowed parents and schoolmasters to inflict physical punishment “for the purpose of correcting what is evil in the child”.

Section 43 violates children's basic human rights to protection under the UN Convention on the Rights of the Child, which Canada ratified in 1991. Nine years ago, the Truth and Reconciliation Commission of Canada called physical punishment “a relic of a discredited past [that] has no place in Canadian schools or homes”, and called for the repeal of section 43 to remove the green light that has enabled so much violence against children.

The research on physical punishment is robust. Physical punishment consistently predicts solely negative developmental outcomes: higher aggression, more mental health problems, slower intellectual development and weaker parent-child relationships. More than 75 peer-reviewed studies have indicated this, and after I testify today you will hear from Professor Durrant and Ms. Butler, who will speak more to that.

Mild physical punishment easily escalates into more severe violence. Children who are slapped or spanked are seven times more likely to experience severe violence than those who are not slapped or spanked. Section 43 tells us that hurting another person is an acceptable and justifiable way to resolve conflict. Children who are physically punished are more likely to engage in dating violence and partner violence in later life because they have learned to respond to conflict with physical aggression.

Parenting groups and teachers argue that section 43 serves as a protection when they need to physically restrain a child, but defences are already available to parents, teachers and caregivers when they use force to defend themselves or another person: section 34 of the Criminal Code to protect property, section 35 of the Criminal Code to prevent the immediate commission of an offence and section 27 of the Criminal Code in response to imminent peril or danger when there is no available legal alternative, which is the common law defence of necessity.

There's strong support for change. Seven hundred organizations across all sectors support the repeal of section 43. They include all major organizations in health care, dentists, doctors, nurses and all of the major organizations in Canada that have taken on the development of kids as their fundamental role.

To date, 65 countries and 18 other regions have prohibited all physical punishment of children. In countries where research has been carried out, there has been no increase in criminal prosecutions or child welfare apprehensions in minor cases. Decreases have been shown in the support for and use of physical punishment. That is important. Why are we lagging behind in banning the physical punishment of children?

My bill has also received support overseas. Members of this committee would have received from organizations in the past few weeks support for Bill C-273, including Human Rights Watch and the World Health Organization. We also have a number of international individuals who have written to this committee expressing support for Bill C-273. It's important to note that countries and regions like Wales, New Zealand and Ireland did not see an increase in prosecutions against parents and teachers since the passing of their legislation to ban physical punishment to children.

Finally, I'd like to quote the Honourable Murray Sinclair, who spoke to this issue seven years ago when we were looking at a previous iteration of the same bill. Murray Sinclair said the following:

At one Indian residential school in Alberta, a teacher was charged with assaulting a student by punching him three times in the face, causing serious injury. The teacher had been convicted of assault at trial but was acquitted on appeal by a court which held that the degree of force that he used was reasonable. That case set the tone for how all children in residential schools were treated thereafter.

It's time to repeal section 43. I look forward to your questions.

Thank you.

[*Translation*]

Thank you very much.

The Chair: Thank you very much.

We'll now begin the first round of questions.

Mr. Moore, the floor is yours.

● (0825)

[*English*]

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

Thank you, Mr. Julian, for being here today to present for your private member's bill.

Unfortunately, it's at a time when there is skyrocketing violence in Canada. Car thefts are up 300% in Toronto alone. Gang homicides are up 100%. There is a dangerous opioid crisis, and just two days ago, a horrific case involving child sexual abuse was thrown out because of vacancies in the court system. Those are all matters for which motions have been put forward for study at this committee. Instead, we're studying a bill—your bill—that would criminalize the behaviour and actions of loving parents and teachers who are trying to provide a safe learning environment for their children.

There are a number of statements you made in your opening remarks, Mr. Julian, that I think could lead Canadians to the wrong conclusion about what the state of the law is in this country. What you neglected to mention is that section 43 of the Criminal Code, which applies to parents and teachers, was considered by the Supreme Court of Canada. Chief Justice Beverley McLachlin, writing for the majority, stated:

The decision not to criminalize such conduct is not grounded in devaluation of the child, but in a concern that to do so risks ruining lives and breaking up families—a burden that in large part would be borne by children and outweigh any benefit derived from applying the criminal process.

That was Chief Justice Beverley McLachlin, when section 43 was constitutionally upheld by our Supreme Court of Canada.

You made a number of comments in your opening remarks and I think they are inflammatory.

You mentioned someone being slapped on the face. The Supreme Court, in considering section 43, said that slapping someone is not protected under section 43 of the Criminal Code.

You mentioned a quote from Sinclair about someone being punched in the face. That could lead someone to the conclusion that section 43 allows parents or teachers to punch children in the face. It does not. That would be a criminal action.

You mention physical correction by teachers. The Supreme Court of Canada, in considering section 43, specifically said that physical correction is available only to parents, not to teachers. Teachers are specifically prohibited from using physical correction on a student.

You have three pretty inflammatory statements in your opening. I think that underpins this whole discussion.

I'm sorry to take up time, but I want to get the record straight on what the Supreme Court said section 43 actually does.

It says that parents and caregivers can only use corrective force that is minor or “trifling” in nature. For example, spanking or slapping a child hard enough that it leaves a mark or bruise would not be considered trifling.

The court said that teachers cannot use force for physical punishment under any circumstances. A physical punishment cannot be used on children younger than two or older than 12 years old. Physical punishment cannot be used on a child in anger or retaliation for something a child did. Objects, such as belts or rulers, must never be used on a child and a child must never be hit or slapped on the face or head, which you mentioned in your comments. Also, any use of force on a child cannot be degrading, inhumane or result in harm or the prospect of harm.

Mr. Julian, what section 43 does is allow a parent whose child is repeatedly trying to put their hand on an oven top—which would result in serious burns—to maybe spank that child, if that's what the parent chooses, when the child refuses to obey any verbal commands.

It allows a teacher to break up a fight in their classroom. The teachers in my riding will tell you that there's increasing violence in the classroom. There are an increasing number of situations where teachers have to intervene in violent conduct of students.

Section 43 does not allow teachers to spank or strap students. In Canada, that is strictly prohibited. Your opening comments would lead someone to believe that teachers can punch a child in the face or strap them. That is criminal activity.

I don't know how much time I have left, Madam Chair. It took a bit of time to set the record straight on what the current state of the law is.

• (0830)

Section 43 is an important provision. It's in the Criminal Code for a reason, and it narrowly protects teachers who are trying to provide a safe learning environment and parents who are trying their best to raise their kids. Section 43 has been considered by the Supreme Court, has been found to be of significant value and has been constitutionally upheld.

Mr. Julian, I'll end by asking you a question. Chief Justice Beverley McLachlin said, "The decision not to criminalize such conduct is not grounded in devaluation of the child, but in a concern that to do so risks ruining lives and breaking up families". Do you think Chief Justice Beverley McLachlin has it all wrong and that you are right?

Mr. Peter Julian: Madam Chair, how much time is left after that very long—

The Chair: You have 30 seconds.

Mr. Peter Julian: Well, obviously that question was not intended to elicit information, but I'll say the following.

Mr. Moore, what you neglected to say was that it was a split decision. What you neglected to say was that since that decision, over 60 countries have banned the physical punishment of children. What you neglected to say as well was that both the Italian and Israeli supreme courts also ruled against corporal—

Hon. Rob Moore: Madam Chair, I asked a question and the question was—

Mr. Peter Julian: You're not taking even more time. You took five and a half minutes out of six.

Hon. Rob Moore: Mr. Julian, you're regurgitating what you've already said. The question I asked—

The Chair: Mr. Moore, your time is up.

Hon. Rob Moore: —was this: Is Beverley McLachlin wrong and you are right? Just answer yes or no.

The Chair: Mr. Moore, the time is up.

I think, Mr. Julian, you're going to get a chance to answer. We're good.

I'll now go to Madame Dhillon.

Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.): Good morning, Mr. Julian, and thank you so much for being here to testify about this bill.

Could you finish your thoughts from the previous question? Go ahead.

Mr. Peter Julian: Thank you so much, Madame Dhillon. I appreciate that.

I believe that committees should ask questions and then allow time for a response. Perhaps I am old school that way.

Since the split decision of the Supreme Court more than 20 years ago, we have seen 60 countries ban physical force used against children. They include almost all of our major allies. I cited Wales, Scotland, Ireland and New Zealand earlier, but there's also Sweden, Finland, Norway, Germany, France—I could go on and on and read the entire list of countries that have gone that way.

Call to action number 6 from the Truth and Reconciliation Commission is something that all parties around the table have committed to. They committed to implementing the calls to action.

The reason I quoted Murray Sinclair, who is renowned, is that he spoke about the impacts of section 43, which dates back to 1892. Again, we're not talking about fresh legislation; we're talking about something that comes from the 19th century. There's a reason there has been so much pressure to repeal section 43 from all the major organization in Canada, including all the major health care organizations and all the major organizations that are trying to facilitate development of our youth, and so much consensus. It's because, as we'll see in the second hour of the discussion, all the peer-reviewed science shows the negative impacts on children of allowing the use of physical force against children.

My final point, which I mentioned at the outset, is that there are a number of provisions in the Criminal Code that allow individuals who are protecting children, who are defending themselves or another person, or who are protecting property.... Those sections of the Criminal Code apply.

I find the argument of Mr. Moore—though I have a lot of respect for him—disingenuous, because the facts and the science prove otherwise.

Ms. Anju Dhillon: Thank you, Mr. Julian.

We cannot deny that there is an increase in violence at schools, but something interesting you mentioned is that corporal punishment against children at a young age begets more violence, so these bullies at school come from somewhere. You don't start bullying out of nowhere.

Maybe you could speak a bit more about the effects of corporal punishment on small children and how they behave in society. I might run out of time, so you can have enough time to answer the question.

What tools can teachers use to manage this kind of violence? Do we have any lessons to learn from other countries?

• (0835)

Mr. Peter Julian: Those are great questions.

First off, do we have lessons to learn from other countries? The 65 countries and 18 other regions around the world I cited that have banned the use of physical force against children did that because it is in the interest of children and youth to do so. We've seen that evolution over the last 20 years. It's been a considerable evolution to ensure that children can grow and prosper and that the loving support that comes from parents, teachers and caregivers can continue. The reality is, as you'll see from the many briefs this committee has received, the science is very clear: There is a range of other tools available to parents and caregivers that do not involve using physical force. There is no doubt this is in the interest of the child.

When we look at all the organizations that have expressed support for this, including the Canadian Medical Association and Canadian Dental Association, they have been very clear about the importance of taking this step. This relic from 1892 continues to be in our Criminal Code and the time has come to repeal it. There have been various initiatives over the years. The Truth and Reconciliation Commission is the most notable. It put this as one of its first calls to action—call to action 6—because of the legacy of residential schools.

Given the weight of the science and the testimony members of this committee are receiving from people who have done the studies and science on the impacts on children, I think it's fair to say that this committee, which is one of the leading committees in the House of Commons, should be looking to advance this legislation so we can repeal section 43.

[Translation]

The Chair: Mr. Julian, you have 30 seconds left.

[English]

Mr. Peter Julian: I want to cite some of the organizations.

Amnesty International Canada supports the repeal of section 43, as do the Anglican Church of Canada, the Canadian Academy of Child and Adolescent Psychiatry, the Canadian Association of Social Workers, the Canadian Coalition for the Rights of Children, the Canadian Council of Child and Youth Advocates, the Jewish Family and Child Service of Greater Toronto and UNICEF Canada.

These organizations are all calling for a repeal of section 43.

[Translation]

The Chair: Thank you very much, Mr. Julian.

Mr. Fortin, you have six minutes.

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

Good morning, Mr. Julian. Welcome to our committee.

Section 43 of the Criminal Code is quite short and simple to read. It talks about using force to correct a pupil or child. That's what you want to be able to accept a defence on. From what I understand of your argument and the references you've given us, correcting a child, imposing corporal punishment—I use the word “punishment”, since that is what we're talking about here—by

spanking him, for example, is rejected these days by a large majority of governments. I'd say that I tend to agree with that.

However, we're talking about using force, and we are talking about fathers, mothers and teachers. Our colleague Mr. Moore talked about it, and I believe Ms. Dhillon also said that it couldn't be denied that there has been an increase in violence in our schools. We know that it may be useful or even essential for a teacher, or even a parent, to use force to control a pupil or child, rather than to correct it.

Could you tell us whether you think the use of force to control a child in certain circumstances may be useful or necessary? Once again, I'm not talking about punishment, since we agree on this issue, and it is therefore settled.

Mr. Peter Julian: Thank you very much, Mr. Fortin.

As I said in my opening remarks, there are already provisions in the Criminal Code related to the use of force. For example, section 34 of the Criminal Code provides for the use of force to defend oneself or another person. Section 35 provides for the use of force in defence of property. Section 27 deals with the use of force to prevent the commission of an offence. According to a common law defence, there is also the state of necessity. Force can also be used in cases where there is no legal recourse.

You're right that there are certain circumstances that require force, but the reality is that those provisions are already in the Criminal Code. In Canada and Quebec, a number of people have been calling for the removal of section 43 for a long time.

• (0840)

Mr. Rhéal Éloi Fortin: Mr. Julian, are you aware of the decision rendered by Justice Berg of the Ontario Court of Justice on December 20 in *R. v. Bender*?

Mr. Peter Julian: I know very little about it, but I would like to know more.

Mr. Rhéal Éloi Fortin: In short, Justice Berg accepted the defence, under section 43, of a schoolteacher who grabbed a child by the wrist to take the child to the back of the classroom and release the child once secure, because the child was becoming violent and there was a fear that the child would assault another pupil. The judge said that this was a good example of a situation where force could be used to control a child and prevent them from being a danger to themselves or others.

I imagine you agree with that decision.

Mr. Peter Julian: Every year, in a few cases, provisions are used—

Mr. Rhéal Éloi Fortin: I'm sorry to interrupt you, but, as you know, we don't have a lot of time.

Do you agree with that decision? Maybe you haven't read it.

Mr. Peter Julian: What I'm saying is that it's not just section 43 that can be used. I believe that, in the vast majority of cases, sections 27, 34 and 35 are also used.

Mr. Rhéal Éloi Fortin: [*Inaudible—Editor*] of section 43, I want to know if you agree with that decision.

Mr. Peter Julian: I was—

Mr. Rhéal Éloi Fortin: You're allowed to tell me that you haven't read it. I don't want to force you—

Mr. Peter Julian: I haven't read it, but, in principle, in this type of decision, sections 27, 34 and 35 are also used. So it's not just section 43 that applies and is used.

Mr. Rhéal Éloi Fortin: Okay, thank you. I don't want to rush you, but you know how things work; our speaking time is limited.

If I understood correctly, you agree that, in certain circumstances, a teacher or parent can use reasonable force. Again, I'm not talking about punishment; I'm talking about the use of force to control a child. In your opinion, that is acceptable.

There is talk of repealing section 43, but, if I understand correctly, you don't intend to prohibit parents or teachers from using force in relation to a child, provided that the force doesn't exceed what is reasonable in the circumstances, as stated in section 43.

Mr. Peter Julian: You're right, but what I'm saying is that other sections of the Criminal Code also apply. In the defence of these kinds of things, it's not just section 43 that applies. There are also sections 27, 34 and 35. That's the point I wanted to make.

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

The Chair: Thank you very much, Mr. Fortin.

Mr. Garrison, you now have the floor for six minutes.

[*English*]

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

I want to thank Mr. Julian for bringing this bill forward in the House of Commons. There are parent groups in my riding that were asking me to do the same thing, and Mr. Julian had already brought this bill forward, so I have significant community support in my riding for it.

Mr. Moore raised the Supreme Court decision from a case called the Canadian Foundation for Children, Youth and the Law v. Canada, a decision from 2004, and he asked you whether you agreed with the Supreme Court.

I'm tempted to ask whether you agree with the three judges who disagreed with the chief justice in that case. It was a split decision, and there were certainly strong arguments made on both sides. Do you agree with the other judges?

• (0845)

Mr. Peter Julian: I agreed with the minority in that split decision. I found their judgment very compelling.

I think you're asking a very good question, Mr. Garrison. If this were before the Supreme Court today, 20 years later, I believe there would be a very different decision made.

The Supreme Court has put it back to Parliament, and Parliament decided at second reading, by a clear majority, to move this bill for-

ward. It is now before the justice committee—a very esteemed committee.

I think the approval in principle that came from the House of Commons directs the work of the Standing Committee on Justice. I would suggest that rather than going through the court system again, which would take a number of years and would, I believe, get a different result today, it makes sense for legislators who were given this mandate, a mandate by our constituents, to make the appropriate decision.

I was very gratified, as I believe most Canadians were, to see the second reading vote that allowed this bill to move forward to this committee.

Mr. Randall Garrison: I strongly believe that there have been changes in Canadian society over the last 20 years that would lead to a different outcome in the courts. I wonder if you could talk a bit about what you think has changed in our attitudes toward violence toward children.

Mr. Peter Julian: That's a great question, Mr. Garrison.

First off is the science. We've seen numerous studies—75 in the last 20 years—that have clearly indicated the negative impact of using physical force against children. That's the first evolution.

Second is the number of countries around the world. There was only a handful in 2004. There are now over 65, plus 18 regions, including Wales and Scotland. These are our allies. These are fellow democracies that are all making the same decision. There's the decision of the Supreme Court of Italy and the decision of the Supreme Court of Israel. These are all indicators that are very clear and compelling, and 700 organizations—all the major health organizations and all the major organizations that work with children—have called upon Parliament to take this step and repeal section 43.

What has changed is the groundswell of support, the science and the international evolution of thoughts about the best way to ensure the development of our children and youth. All those things have changed since that split decision.

Mr. Randall Garrison: You mentioned reconciliation early on in your presentation. I'll ask whether you share my concern that if we dismiss the arguments of first nations people about this bill, we are in fact doing damage to the process of reconciliation.

Mr. Peter Julian: I think you have absolutely hit the nail on the head, Mr. Garrison.

The Truth and Reconciliation Commission put forward calls to action, and it has been a number of years since the last call to action was implemented. This is a way for parliamentarians to step forward and ensure we are moving forward on the calls to action. It has been nine years since call to action 6 was published—nine years.

I cited Murray Sinclair. This was after TRC recommendation 6, the call to action that Parliament did not follow through on. Now Parliament has the opportunity to follow through on it. This would be a significant and important step for national reconciliation.

Given what we know now about residential schools, it is important symbolically and an important step for Parliament to take.

Mr. Randall Garrison: I know I have very little time, but I want to ask you about something that came up in my riding in discussions with police, who are forced to investigate family violence. One of the officers said to me that they found this section problematic for their investigations and that their investigations would be much easier if it was clear that violence against children is not acceptable.

In their investigations now, they have to consider the level of violence, whether it was appropriate and all sorts of factors that make their investigations much more difficult. That officer was a very strong proponent of your bill, saying that it would make their investigations clearer and their explanations to families much easier when violence takes place.

Mr. Peter Julian: That is a very important point. Thank you, Mr. Garrison.

The reality is that child protection workers and police officers have found the very complicated nature of the split decision from 20 years ago difficult to enforce regarding child protection. The confusion that comes out of that is, I think, apparent to everyone. The TRC recommendation was to repeal section 43 to eliminate that confusion and really start the process of reconciliation.

• (0850)

The Chair: Thank you very much.

We'll now move to our second round. We'll begin with Mr. Caputo for five minutes.

Mr. Frank Caputo (Kamloops—Thompson—Cariboo, CPC): Thank you, Mr. Julian, for being here.

Frankly, if this law were to pass, it wouldn't impact me as a parent, but I'm not here as me. I'm here as somebody who's trying to ask you questions from a legitimate point of inquiry.

I want to get to the bottom of what you believe should be criminalized. Right now, to be candid, I think we're talking about lots of extremes. For instance, you said there was a minority judgment, 6-3. I'm not sure which of the three minority judgments—or dissenting judges, if we want to be technical—you prefer. Do you have a preference as to which one you thought was right?

Mr. Peter Julian: As to the split decision, when you read the decisions of the minority of the Supreme Court, it is very clear that the belief was that section 43 is not justified in today's society.

Mr. Frank Caputo: Well, when I read them, I look at them as three very different decisions. One said it was too vague. Another said it couldn't be saved in relation to teachers, but not to parents. Then one said it did offend the charter. One of the reasons is that it was broad in relation to a very slight use of force.

With all due respect, I don't think we can say the minority or the dissenters all got it right, because they got to very different places in very different ways. If we are going to correct the record, then let's be clear on that.

I want to ask you, Mr. Julian, about somebody symbolically correcting behaviour, which is what the Supreme Court talked about

and what one of the dissenting judges talked about. I'm going to give you an example. Again, I just want to figure out what you believe should be covered. If a parent symbolically taps a wrist with two fingers, would that offend the criminal law, in your view? I'm sorry; I'll be more clear. Should that conduct be criminalized?

Mr. Peter Julian: First off, I think your point about the Supreme Court actually reinforces the point of those who want to repeal section 43. You're saying there are a variety of judgments and statements in the Supreme Court's split decision. That confusion, which you've just very clearly indicated, is a very eloquent testament to repealing section 43. You've indicated the confusion, the differences and how confusing they are.

Mr. Garrison's point—

Mr. Frank Caputo: No.

Mr. Peter Julian: Yes, you certainly did. I have a lot of respect for you. I understand that you do your homework. You've just indicated one of the principal arguments for repealing section 43, which is the confusion around the Supreme Court decision from 20 years ago. Mr. Garrison indicated in his questioning that at the same time, for teachers—

Mr. Frank Caputo: Should this be criminal? That's all I want to know.

Mr. Peter Julian: —police officers, social workers—

Mr. Frank Caputo: Mr. Julian, please....

Mr. Peter Julian: —and child protection officers and workers, that confusion you've just indicated needs to be cleared up.

Secondly, you're asking me to define the law, and that is not up to me.

An hon. member: That's what this does.

Mr. Peter Julian: That is not up to me. We are putting forward a call to action, and the Truth and Reconciliation Commission put forward that call to action, to repeal section 43.

Mr. Frank Caputo: It's up to Parliament.

Mr. Peter Julian: You are asking me to put in place some provisions or interpretations in the Criminal Code, and I've cited them—section 27, section 34 and section 35—

Mr. Frank Caputo: No, I'm not asking you to do anything. Those are self-defence sections. I'm saying when should a parent be subject to criminal law? That's why we're here.

Should a parent who taps a wrist with two fingers be subject to criminal law? To simply say, "Well, I don't know; that's up to somebody else".... With all due respect, we're here to talk about these very issues. Again, I've tried to come here with an open mind. That's why I'm asking this question.

You're the sponsor. Do you believe that?

Mr. Peter Julian: Okay. Let me ask you this back: Is it done in anger? Is it done in a way that—

Mr. Frank Caputo: Yes, it's done for correction.

Mr. Peter Julian: Is it done in anger?

Mr. Frank Caputo: It's for correction. There's no anger.

Mr. Peter Julian: What extent of force is used? Here again you're proving my point.

Mr. Frank Caputo: It's a tap on the wrist. That's the extent of the force used.

• (0855)

Mr. Peter Julian: You're demonstrating something that you are not defining. Are you using force?

Mr. Frank Caputo: It's two fingers on the wrist.

Mr. Peter Julian: Is it in anger? What are the circumstances?

Mr. Frank Caputo: It's slight force.

Mr. Peter Julian: These are all things that indicate exactly the point I'm making.

The Chair: Thank you very much, gentlemen.

I will now move to Mr. Housefather for five minutes.

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

That was highly entertaining. I want to thank Mr. Caputo and Mr. Julian for providing that.

I'm going to come back to the decision on Canadian Foundation for Children, Youth and the Law v. Canada. I wasn't even planning to go down this line of questioning, but given the previous questions, I think the right question involves looking at the majority judgment versus the three minority judgments that Mr. Caputo was referring to.

The majority judgment states that you cannot use force against children under two. Mr. Julian, is that written anywhere in section 43?

Mr. Peter Julian: No.

Mr. Anthony Housefather: It also says that you can't use it against teens. Is that written anywhere in section 43?

Mr. Peter Julian: No.

Mr. Anthony Housefather: It seems to me that the judges in that decision actually rewrote section 43. Parliament didn't intervene. I think people who would be against the repeal of section 43 would say that it should be up to Parliament and not judges to write the law. It seems that the law has been rewritten by judges in a number of ways—I won't get into all of the aspects of the majority judgment—without Parliament having had a say.

Would you agree with that?

Mr. Peter Julian: I would. The Supreme Court's split decision has, I think it's fair to say, caused confusion that continues to exist today. That is why the TRC has made a very clear and unambiguous call to action—number 6—to repeal section 43.

Confusion has come out of that split decision, which Mr. Caputo so eloquently spoke to and demonstrated just a few moments ago.

Mr. Anthony Housefather: I agree. I thought he very eloquently also demonstrated the two-finger thing.

Would you know, Mr. Julian, based on the Supreme Court judgment from 2004 and the drafting of section 43, whether that could have a legitimate defence under section 43?

Mr. Peter Julian: That is a very good question, Mr. Housefather. That is indeed why I said you were asking me to cast judgment on something that has been very confusing. It's confusing to child protection workers and police officers. It's even confusing to the general public.

Mr. Anthony Housefather: In 1989, I believe, we adopted the UN Convention on the Rights of the Child. As I understand it, that says there should not be defences related to corporal punishment. Is that correct?

Mr. Peter Julian: Yes, but it was in 1991. You're absolutely right to point to that and to the evolution of what has happened subsequently. The evolution internationally of virtually every democratic state that values human rights has been to eliminate provisions of their criminal codes that allow the use of physical force and punishment against children.

Mr. Anthony Housefather: That's even in commonwealth countries, like New Zealand, for example, where it's been parallel. They did it in 2007. Scotland and Wales more recently did that.

Mr. Peter Julian: You are absolutely right and you are well briefed.

We can look at European countries and countries around the world, including Japan, South Korea, South Africa and France. The list goes on and on. There are 65 countries and 18 regions. "Regions" means places like Scotland and Wales. These countries have a similar background of common law, defence of human rights and concern about child development. Almost all of those countries have moved in that direction since the Supreme Court split decision that has caused so much confusion, which the Conservatives have so clearly demonstrated at this committee hearing.

It is time to move forward on repealing section 43 for the issues around truth and reconciliation and child development, and to heed the call of 700 important organizations across the country that have all said with one voice that it's time to repeal section 43.

Mr. Anthony Housefather: Do I have any time left, Madam Chair?

The Chair: You have 50 seconds.

Mr. Anthony Housefather: I believe Justice Arbour in her minority decision stated that the section was too vague, that it should be unconstitutional because of vagueness. After reading that and reading the majority judgment, I would tend to agree that this section does not give us clarity on what can and cannot be done.

Mr. Julian, would you be averse if, for example, those who believe there needs to be some clarity to replace this section—but not with a defence like section 43—provided some kind of amendment to the bill?

• (0900)

Mr. Peter Julian: I believe it is very important, for a whole range of reasons, to repeal section 43.

I note that the Canadian Teachers' Federation has said that it would like to see some changes to section 265 of the Criminal Code of Canada. I think that is something the government could look at.

The importance of repealing section 43 goes beyond the fact that it's an aspect of the Criminal Code that dates from 1892. There are other ways of addressing that issue in other sections of the Criminal Code.

As I mentioned, though, in countries that have stopped the physical punishment of children and the use of physical force against children, there has not been any increase in prosecution or cases against parents or teachers. That simply has not happened.

There are other ways of looking at this in terms of the Criminal Code. Section 265 should be looked at.

The Chair: Thank you, Mr. Julian.

[*Translation*]

Mr. Fortin, you have two and a half minutes.

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

Mr. Julian, earlier, in the first round of questions, I talked to you about the use of force to control a child. I thought I understood that we agreed on that.

Now, as far as the correction is concerned, I admit that I'm a bit troubled. You're right, I think, in some respects. On others, I'm not sure. I'd like to hear a clear answer to what Mr. Caputo said. He gave the example of a parent who would use two fingers to give a slap on the wrist to a child, telling the child not to touch that, or not to do that. However, I'm not sure I understood your position in a situation like that.

It makes me wonder, do we treat all use of force in the same way? I'm thinking, for example, of a teacher or a parent who would give the whip. When I was a little boy, school principals would rap a child on the wrist with a ruler, which would no longer be acceptable today for all kinds of reasons. Whether or not it's provided for in the Criminal Code, I think there would be a kind of revolt against it.

I'd like—

The Chair: Mr. Fortin, one moment, please.

We have a problem with ParlVu, so we'll suspend for a few minutes.

• (0900)

(Pause)

• (0905)

The Chair: We are resuming the meeting.

Mr. Fortin, you can start again. You have the floor for two and a half minutes.

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

Mr. Julian, I'm going to go back to what I was saying before the interruption. The use of force to control a child was raised in the previous round of questions. I would now like to discuss correction.

I was interested in Mr. Caputo's question about whether hitting a child on the hand with two fingers, whatever the reason, should be treated the same way as a case where a teacher or parent hits a child with a stick or slaps the child on the butt, hand or back. Shouldn't we show a bit of discernment as to what the actual circumstances are?

You'll tell me that section 34 refers to reasonable force, but it's important to understand that we are talking about criminalizing a behaviour. If a mother ended up in prison one day because she slapped her little girl on the wrist, I wouldn't be very happy that I was someone who voted in favour of this amendment.

I'm still making up my mind on this, Mr. Julian. I really want to look at degree and escalating force with you.

Should all use of force to discipline a child be treated the same way?

Mr. Peter Julian: No, Mr. Fortin. You're absolutely right. There is a difference between what you described and hitting a child systematically.

However, the reality, as you'll hear and as you've seen in the statements that have been sent to the committee, is that there can be a progression.

In other words, it may be okay to use some physical force against children, but it can escalate if there's a provision in the Criminal Code that allows it.

The reason why so many groups, such as community health centres and early childhood centres, some from Quebec, are asking this committee to continue its work and repeal section 43 is that the section is not clear. It is confusing and can lead to more serious situations.

• (0910)

The Chair: Thank you.

Mr. Rhéal Éloi Fortin: If it's not clear, shouldn't it be clarified rather than simply eliminated?

The Chair: Your time is up.

[*English*]

For the last two and a half minutes, we'll go to Mr. Garrison.

Mr. Randall Garrison: In questioning, we've heard a lot about the Supreme Court decision, and there seems to be an attempt to say somehow that the three dissenting judges didn't agree. What they agreed on was that section 43 was unconstitutional. I'll review their different ways of getting there.

Justice Binnie said we needed to be clear, when talking about section 43, that its purpose is to protect parents and teachers, not children. As drafted, there is nothing in this section about protecting children. Justice Arbour said that it clearly violates the right to security of the person of children. Most interestingly, Justice Deschamps said the court can't read the section down to create a constitutionally valid provision. She's saying that what the majority tried to do is recognize that it offends the Constitution, so they tried to narrow it to make it constitutional.

I think it's important to remember that all three of those judges clearly found that section 43 violates the rights of children and has nothing to do with protecting children; it has to do with protecting parents and teachers.

I wonder if you have some comment on that.

Mr. Peter Julian: That was very eloquently put, Mr. Garrison. Thank you very much for that.

That leads to the confusion that Mr. Housefather was speaking to as well. We have a situation that is entirely confused. We have a Supreme Court that today, 20 years later, because of the evolution of the law, because of understanding the science about the impacts of physical force used against children, because of the international evolution of countries that have decided in the interests of children, youth and their families that they need to move forward in stopping the use of physical force and punishment against children, and because of the organizations in Canada, health care organizations like the Canadian Medical Association and so many others, which have all said with one voice that we need to repeal section 43....

Mr. Garrison's point is a very valid one. We had a split decision. Twenty years later, we know far more, and it's time to take the step to repeal section 43 and put into place call to action number 6 from the Truth and Reconciliation Commission. I hope this committee will continue to further that work.

The Chair: Thank you very much for that.

We will suspend for a minute because we have two witnesses in the back who are going to come to the front and have one witness to be tested virtually.

• (0910) _____ (Pause) _____

• (0915)

The Chair: We have with us Dr. Joan Durrant, a professor at the University of Manitoba, appearing on her own behalf.

On behalf of the Association for Reformed Political Action Canada, we have John Sikkema, director of law and policy, and Daniel Zekveld, policy analyst.

On Zoom, we have, representing Canadian Coalition for the Rights of Children, Dr. Kate Butler, past chair.

[Translation]

Welcome to all of you.

You will have five minutes to make your opening remarks, and then we will go to questions from the committee members.

[English]

We will start with you, Dr. Durrant, if you are ready. You have five minutes.

Dr. Joan Durrant (Professor, University of Manitoba, As an Individual): Hello, and thank you for the invitation to speak with you today about this very important bill.

I'll quickly introduce myself. I'm a developmental psychologist and a retired professor in the college of medicine at the University of Manitoba. I've spent my 34-year career studying the corporal punishment of children. I've lived in Sweden extensively specifically to study the first corporal punishment ban in the world, and I've also travelled to New Zealand several times to study their prohibition. I'm a co-author of the "Joint Statement on Physical Punishment of Children and Youth", which has now been endorsed by almost 700 professional organizations in Canada. I'm also the executive director of a non-profit parent support organization.

The scientific literature is highly consistent: Corporal punishment places children's healthy development at risk. Well over 100 studies conducted across a wide range of countries and cultures have found that corporal punishment has solely negative impacts, including more behaviour problems, more mental health problems, more dating violence, more intimate partner violence, poorer relationships with parents, slower cognitive development and disrupted brain development.

Some people suggest that behaviour problems elicit more corporal punishment rather than the other way around, but methods have been used to address this question, including longitudinal studies, intervention studies and very sophisticated statistical analyses. No matter the design or analytical approach, physical punishment only makes behaviour problems worse, even when the punishment is mild.

A meta-analysis was carried out of 75 studies of only spanking, and those punishments reliably predicted the same negative outcomes. There's no evidence that spanking benefits children in any way. If we want to promote children's healthy development, which I'm sure all of us here do, the last thing we should be doing is hitting them. This really shouldn't surprise us. None of us benefit from being hit, so why should children be any different?

Once a parent starts hitting, they've raised the stakes. If the child won't comply or can't comply, the parent is very likely to hit harder. In a matter of seconds, a spanking can turn into a beating or a homicide. A large study in Quebec found that children who are slapped and spanked are seven times more likely to be kicked, beaten and choked. Three national studies in Canada—the CIS—showed that 75% of child abuse cases began as physical punishment. When we [Technical Difficulty—Editor] children, we're placing those children at risk of increasingly severe violence.

When children are hit, they often become angry and resentful. In studies where children have been asked what it feels like to be smacked, they talk about wanting revenge and taking their anger out on others. They also learn that they're unworthy of basic respect. In these studies, children say things like, "You feel very little and not at all important to the world." I don't think these are the thoughts we want to implant in children's minds.

We know a lot about discipline that does promote healthy development. Collaborative problem solving and emotion coaching are just two examples. These approaches give children skills to solve problems and resolve conflict so that rather than hitting them, parents learn how to strengthen children's emotion regulation, problem solving and communication.

As has been mentioned, corporal punishment is now against the law in 65 countries, two nations—Scotland and Wales—and 16 territories. Sweden was the first. I have seen absurd claims that Swedish parents have lost control of their children and the youth assault rate has skyrocketed. In fact, serious family assaults against children have declined, youth have become less involved in crime, and by 2006, Sweden had the lowest rate of bullying out of 40 countries. Systematic research on Swedish parenting has found that parents are not permissive. They are less punitive, but they're no less likely to intervene.

● (0920)

As has been mentioned, law reform is not followed by an increase in prosecutions. In many countries, reports of assaults against children increased, but that's the point: to make violence against children more visible and less acceptable. However, even where reporting has increased, the prosecution rate has not, and—

The Chair: Thank you very much, Dr. Durrant.

You will get a chance to—

Dr. Joan Durrant: Thank you very much.

The Chair: I should have mentioned at the beginning that, due to the fact that we have three witnesses and that many members will want their turn to question, I will do my best to keep track of time. I will raise a card at 30 seconds without saying anything, but I will have to interrupt people when the time is up. I'm simply trying to give everybody a fair chance at the committee.

I will now turn to the Association for Reformed Political Action Canada. You have five minutes.

Mr. Daniel Zekveld (Policy Analyst, Association for Reformed Political Action Canada): Good morning. Thank you for inviting us to speak to you today regarding Bill C-273.

ARPA Canada believes Parliament must not repeal section 43 of the Criminal Code. I want to address this topic of corporal discipline in three brief points.

The first point, which underlies the rest of the conversation on corporal discipline, is about parental authority. The family has both natural and pre-political authority. That's why the Canadian Bill of Rights refers to "the position of the family in a society of free men and free institutions", and why the Universal Declaration of Human Rights calls the family "the natural and fundamental group unit of society". Respecting parental authority and family integrity means

not interfering in families, particularly through the criminal law, without clearly compelling reasons.

Professor Melissa Moschella uses the analogy of intervening by force in another sovereign nation. She explains that the international community must respect the authority of sovereign states, but also has an obligation to help their people when they need it. Coercive interference in any circumstance requires extremely strong justification, such as serious human rights abuses or threatening the peace of other sovereign states. Likewise, every political community consists of families with their own authority. Although parental authority may be imperfect at times, the state must not intervene coercively, except in cases of serious abuse and neglect where parents are clearly failing to fulfill their role.

As mentioned already, Chief Justice Beverley McLachlin, writing for the Supreme Court of Canada in 2004, said:

...without s. 43, Canada's broad assault law would criminalize force falling far short of what we think of as corporal punishment, like placing an unwilling child in a chair for a five-minute "time-out". The decision not to criminalize such conduct is not grounded in devaluation of the child, but in a concern that to do so risks ruining lives and breaking up families—a burden that in large part would be borne by children and outweigh any benefit derived from applying the criminal process.

My second point is that there is no adequate evidence that parents who use careful, measured corporal discipline are failing in their role as parents in a way that would merit state intrusion or prosecution of parents, which would cause serious disruption and harm children. Studies on corporal discipline often confuse the cause-and-effect relationship between corporal discipline and children's outcomes. Some studies assume that corporal discipline causes aggressive behaviour based on a correlation. However, it could be that aggressive children were disciplined more because they were more aggressive, rather than the reverse. Many studies fail to distinguish between harsh physical punishment and the measured physical discipline permitted by Canadian law. Not all forms of physical discipline are the same or have the same effects.

Before criminalizing corporal discipline, lawmakers should at least have strong evidence to demonstrate that it is much less effective than other methods. However, some studies have shown that physical discipline within reasonable limits is as good as or better than many other disciplinary tactics. The outcomes for children who receive corporal discipline depend on the type of discipline and on whether the family has a consistent set of guidelines for when and how corporal discipline is used.

Finally, other jurisdictions reveal that banning corporal discipline causes problems. For example, one Swedish psychiatrist argues that banning corporal discipline may make parents less willing to discipline or correct their children in any way. Since Sweden banned spanking, its rate of assaults of minors has increased dramatically. Examples from Austria and Germany show that parents who thought mild forms of corporal discipline were legal were less likely to resort to severe punishment than those who thought it was illegal. When no corporal discipline is permitted, parents may be more lenient until they reach a breaking point. Prohibitions on corporal discipline may also increase verbal hostility by parents, or increase the number of parents who are unable to control their children's behaviour. As such, permitting corporal discipline within reasonable boundaries, as Canada does, may prevent negative consequences.

In conclusion, this committee should support retaining section 43 of the Criminal Code. Doing so would align with the Supreme Court of Canada in respecting the responsibility of parents and the different ways parents may choose to raise their children. That said, if the committee believes further clarity is needed in section 43, the Criminal Code could be amended to include the Supreme Court's clarification about what constitutes reasonable force. These limits strike an appropriate balance that allows parents to raise their children as they see fit while also ensuring children are protected.

Thank you again for the opportunity to appear today. We're looking forward to any questions.

• (0925)

The Chair: Thank you very much.

I will now go to Dr. Butler by video conference. You have five minutes.

Dr. Kate Butler (Past Chair, Canadian Coalition for the Rights of Children): Thank you so much, Madam Chair, for having me today to speak about Bill C-273. I'm so sorry not to be there in person. Instead, I'm calling from Toronto, which is on the traditional lands of the Mississaugas of the Credit—

The Chair: Please hold on a moment. It's very hard to hear you on this side.

Okay. Please continue.

Dr. Kate Butler: In these opening remarks, I'm going to speak about why Bill C-273 is an important step toward Canada meeting its international human rights obligations.

This colonial law allowing corporal punishment dates from 1892 and is a clear violation of children's protection rights, yet it remains in the Criminal Code. Canada has fallen behind the other 65 countries globally that have met their Convention on the Rights of the Child's obligations by prohibiting physical punishment in all contexts.

I speak to you today in my role as past chair of the Canadian Coalition for the Rights of Children and as a recognized children's rights expert with a Ph.D. in sociology. I've authored numerous articles and reports on children's rights in Canada and globally, with a specialization in protection rights.

The CCRC is a national umbrella group of organizations and individuals across Canada who promote the rights of children and the

full implementation of the Convention on the Rights of the Child. We have led the civil society role in each of the four UN reviews of Canada under the Convention on the Rights of the Child, including leading the youth engagement part of the most recent UN review. We engaged hundreds of young people on behalf of the federal government. These young people, who are not here today, told us that violence in the home is an incredibly important issue to them. I wanted to bring along their voice with me today.

Members of the CCRC include such organizations as UNICEF Canada, which currently co-chairs the coalition, along with academics from all disciplines, indigenous groups, health groups and faith organizations.

As you've heard, corporal punishment refers to any form of punishment that is intended to cause physical pain to a person. It's the most common form of violence against children.

• (0930)

The Chair: Dr. Butler, I'm sorry to interrupt you, but I have a request from the interpreters. Could you slow down a bit?

Dr. Kate Butler: Sure.

Children are rights holders under the convention and also under Canadian law. We don't allow for any other group in Canada to legally face violence in the home, but we do for children. This is a gross violation of children's rights. I'm here to remind all of you that you represent constituents who are under the age of 18 as much as you do the adults, even if they can't vote. Supporting this bill is one step in the broader context of protecting children in Canada from violence.

Almost two years ago, Canada was reviewed by the United Nations Committee on the Rights of the Child. In their concluding observations, the committee recommended that Canada repeal section 43 of the Criminal Code and “explicitly prohibit all forms of violence against all age groups of children within the family, in schools and in other institutions”. They also suggested that we “promote positive, non-violent” child-rearing and conduct awareness campaigns. Canada was called out for not fulfilling its international obligations to protect children.

The UN committee is not the only one saying that Canada has failed to meet our obligations. In 2015, as Mr. Julian and Mr. Garrison noted earlier, the Truth and Reconciliation Commission of Canada released its summary report and calls to action. Call to action number 6 states, “We call upon the Government of Canada to repeal Section 43”. This makes visible a complex and multi-dimensional problem of child violence and well-being.

Canada is a pathfinder country in the global partnership to end violence against children campaign, housed at the World Health Organization. The current Liberal government signed on to be a pathfinder country in 2018, yet we still have not done the right thing to protect children in this country by moving to prohibit corporal punishment.

This bill has support from international human rights experts. I believe you've all read the letters. In the interests of time, I think I'll keep moving.

Violence against children is not a partisan issue. This is one that all your parties can and should support. Canada prides itself on being a leader in human rights, and this is a human rights issue. Our Prime Minister has told the world that Canada is back on the human rights scene. I ask all of you to consider how this bill would allow us to comply with international human rights laws and the Truth and Reconciliation Commission's calls to action, and would make us a leader in human rights again.

The Committee on the Rights of the Child has consistently called on Canada to prohibit all corporal punishment of children. Therefore, we ask you and your colleagues in the House of Commons to take the necessary steps to repeal section 43.

I look forward to your questions. I hope my sound quality worked out okay in the end.

Thank you so much.

The Chair: Thank you very much.

We'll now begin with our first round of questioning of six minutes each. Again, I will try to be tactful with the 30 seconds, but I will need to stop you when the time is up.

We will start with Mr. Van Popta from the Conservative Party.

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

Thank you to the witnesses for being here.

We're talking about a private member's bill, Bill C-273, that would ban corporal punishment by repealing section 43. We heard in earlier testimony today that section 43 is a codification of the common law of defence for parents and teachers who would discipline their children.

Mr. Zekveld, in your testimony, you quoted from paragraph 62 of the Supreme Court of Canada decision of 2004, which actually upheld the constitutionality of section 43. I'm just going to reread one sentence from there and ask you to comment on it. This is what the chief justice said: "The reality is that without s. 43, Canada's broad assault law would criminalize force falling far short of what we think of as corporal punishment, like placing an unwilling child in a chair for a five-minute 'time-out'".

To use the example from the lively exchange between my colleague Mr. Caputo and the sponsor of the bill, Mr. Julian, a gentle slap on the wrist would be criminalized given the broad wording of section 265 of the Criminal Code. Can you comment on that? Are we casting the net too widely by eliminating the section 43 defence altogether?

• (0935)

Mr. Daniel Zekveld: Certainly, it would cast the net too widely to repeal section 43 altogether. The Supreme Court has defined what kind of discipline would be allowable under section 43. It allows parents to use some corrective force to a child, but force that is not abusive. It's not done in anger but done for the benefit of the child, ultimately.

Mr. Tako Van Popta: I'm reading from a report that you submitted I believe to the Standing Senate Committee on Legal and Constitutional Affairs, which was studying this topic or maybe one of the predecessor bills that would ban section 43. In recommendation 3, you said that perhaps we could add a section 43.1, which would essentially codify the limitations the Supreme Court of Canada stated around section 43.

As you heard in earlier testimony today, after that Supreme Court of Canada decision, Parliament never got around to changing anything to section 43, so perhaps you could comment on the expansion that you propose by adding a section 43.1 for clarification.

Mr. John Sikkema (Director, Law and Policy, Association for Reformed Political Action Canada): I think this ties into a point that Mr. Caputo was making about part of the disagreement at the Supreme Court, which I think was largely about who should be clarifying the law, not necessarily that corporal discipline should not be permitted at all. I'll run through that really quickly.

We have six of nine judges agreeing that this is constitutional. Justice Binnie agrees in the result that it is constitutional for parents, so now we're at seven out of nine. Justice Arbour said there wasn't much to go on and that on its face, it's too vague and would permit the severe discipline of children and severe use of force. She said it should be Parliament that clarifies that. It was her position that we shouldn't be going through this and noting all the things it does not allow because that should be for Parliament. She said to send it to Parliament and let them fix it.

There was much more about the relationship between courts and Parliament behind Justice Arbour's dissent, and it was likewise with Justice Deschamps. As Mr. Garrison rightly pointed out, Justice Deschamps said that the Supreme Court was asked to rule on the constitutionality of this provision, not to reinterpret or basically amend the provision to make it constitutional. However, that's what the court did, and we can discuss whether that should have been Parliament. I think it's helpful, in certain ways, to have that embedded in the statute for clarity, but that's really what the Supreme Court did, and Justice Deschamps recognized that.

For two of the nine judges, I think what was behind much of their dissent was not that there should not be any form of corporal discipline at all permitted. It was about whose job it is to remedy provisions that on their face are not precise enough.

Mr. Tako Van Popta: I'm going to ask you if you could submit your proposed section 43.1 to this committee for us to consider.

Moving on, I'm reading from briefing notes prepared by the Library of Parliament. I'm very confident in our analysts. They're talking about the disagreement among conflicting research on whether or not corporal punishment is helpful or hurtful, and they state, "The two main criticisms are that research on the negative effects of corporal punishment does not adequately distinguish between physical punishment and physical abuse".

I'm wondering if you could comment on that briefly.

Mr. Daniel Zekveld: First of all, I'll note that we have submitted a written submission to this committee and that has the recommendation.

To comment on the question briefly, I would point to a couple of the studies that we reference in our written submission, which you should be receiving shortly. I would point to footnote 3, which has a couple of studies that explain some of the methodology used in research and how those issues get conflated. There's also a study reference there by advocates who support—

● (0940)

The Chair: Thank you very much, Mr. Zekveld. You may get a chance later. I appreciate your pointing out that you have already submitted or are submitting something in writing.

I should say for any of our witnesses that if there's anything you want to add, please submit it in writing.

I will now move to Mr. Mendicino for the Liberal Party of Canada.

Hon. Marco Mendicino (Eglinton—Lawrence, Lib.): Thank you, Madam Chair.

Thank you to Mr. Julian for bringing forward this private member's bill. I appreciated his remarks at the outset.

I also want to thank the witnesses for their interventions and my colleagues across the table for their questions thus far.

I would submit to the witnesses that there is broad agreement among all parliamentarians and Canadians that children are among the most vulnerable populations in our country and must be protected. I would hope there's a very strong consensus that we must do our utmost to eliminate any violence towards them, whether it's physical, psychological, mental or otherwise. I take at face value that that's the objective of this bill.

Through the questions we've heard thus far, I think that as a result of the Supreme Court of Canada's decision back in 2004 on section 43 of the Criminal Code, which codifies a statutory defence when someone is charged with assaulting a child, there have been further interpretations on the extent to which that defence might apply to someone. What I'd like to do in my remaining minutes is really focus on the lively debate about whether or not any physical force is appropriate or justified to protect the child and others they may harm for a variety of reasons, including themselves.

As I interpret the Supreme Court of Canada's decision, we are really talking about children between the ages of two and 12 where

the force is "reasonable under the circumstances"—to use the language of the Supreme Court—and, furthermore, where the reasonable exercise of that force is trifling and transitory.

Dr. Durrant, in your opinion, is there any circumstance in which...? Setting aside the use of the term "punishment"—because I think that imports many of the concerns that you and other experts have in this field—is there any physical force that can be exerted on a child between the ages of two and 12 that is trifling and transitory for the purposes of protecting them or others around them?

Dr. Joan Durrant: Yes. Absolutely. Children need protection. That's what this is all about. What we don't want is to have them hit, slapped, kicked and punched, which is what happens in real life.

Our legal system operates on the principle of discretion. Police have discretion. Prosecutors have discretion. Parents and teachers have the defence of necessity.

I'd like you all to think for one minute about the life of a group home worker, the life of a youth care worker, the life of a nurse in a personal care home and the lives of people who work in child care. None of them fall under section 43. They cannot claim that defence, yet they, every day and all day, are using force.

They dress people. They move people. They lift people. They carry people. They feed people. They impose force upon people for their care and protection. That is completely legal, and there are many defences.

They aren't dragged into court. How often do you hear about child care workers being dragged into court because they put a snowsuit on a child or they pulled a child away from something dangerous? That is care and protection. That is not what section 43 is about.

Section 43 comes from an 1860 decision in a case where a schoolmaster killed a student. He beat the child with a stick for two hours. The only reason that came to court was the child died. That would otherwise have been fine. He set the limit at killing the child, and we're fortunately moving that yardstick.

● (0945)

Hon. Marco Mendicino: Thank you for that clarification.

Would you agree that a full repeal would create further ambiguity for parents and teachers since it would remove what is now not only a codified defence, but a codified defence as upheld constitutionally by the Supreme Court of Canada in a way that I think you very compellingly explained does not apply to workers?

What you have described is the polar opposite of what I believe to be the genesis of the Truth and Reconciliation Commission's call to action for a full repeal, which was, of course, an evil and sadistic punishment—

The Chair: You have 30 seconds.

Hon. Marco Mendicino: —and torture visited upon first nations, Inuit and Métis children across the land. That's not what you're talking about. Is that correct?

Dr. Joan Durrant: No. Of course, any severe violence against a child is an assault.

If you're worried about two fingers tapping a hand, I'd like to ask you this: Has that child turned two or are they turning two tomorrow? If they're turning two tomorrow, that is already against the law. An 18-month-old or anybody below two years old cannot be hit in any way.

Hon. Marco Mendicino: Thank you, Dr. Durrant.

Dr. Joan Durrant: That is already against the law, as is hitting a child in frustration.

The Chair: Thank you, Dr. Durrant.

I will now move to the Bloc and Monsieur Fortin.

[*Translation*]

It's your turn for six minutes.

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

I would like to thank all the witnesses for being here this morning. It's invaluable.

Unfortunately, I have not read the provision that Mr. Sikkema or Mr. Zekveld proposed adding to the Criminal Code, section 43.1. From what I understand, they're going to send it to us. I am interested and look forward to reading it.

I would like to hear what you have to say on this issue, Professor Durrant. I appreciated your testimony. What you said made sense. I wish I had an hour with you instead of five minutes. I would like to hear more from you about what we should do.

I am concerned about the fact that the use of force is often necessary to control children. Having raised children, and my wife being a teacher, I know how it goes. However, I understand that the current section 43 allows for the use of force to control or discipline a child, but in a reasonable manner. Now that we're about to remove it, I think we have to be very careful. I'm not saying it's not a good idea, but I'm hesitant. I think we have to be careful, because we're talking about criminalizing behaviour. We are talking about a mother or father who could eventually be sent to prison for something they did.

As a result, I feel I have to be careful, and I'd like to hear your opinion. Would it not be a good idea to amend section 43 by adding a provision that would clarify what is allowed and what is not, based on previous court decisions? That would ensure that teachers and parents could do their jobs as teachers and parents. Whether this new provision is numbered 43.1 or 43(b) matters little—to me, the numbering is a detail.

As far as I'm concerned, it's quite clear that hitting a child with a stick is not acceptable. It's not even debatable. You gave the example, going back to 1916 or 1816, of a teacher who ended up killing a child. That's obviously not acceptable. However, let's set aside the extreme cases; otherwise, it will never end. In your opinion, would it not be a better idea to clarify, in section 43, what can and cannot be done with respect to the use of force against children rather than to blindly eliminate section 43?

[*English*]

Dr. Joan Durrant: No, I do not. I think that's a terrible idea. The reason is this. This is the human rights committee. This is a committee that makes decisions on the basis of universal human rights. Children are the only people who are not protected from assault. They are the only ones with this exemption.

Think for a moment about the Criminal Code of the past. There was once an exemption in section 43 for masters of apprentices. They could hit their apprentices. They no longer can. There was section 44, which exempted captains of naval vessels for using force to correct and discipline. That was repealed in 2001. Captains of ships cannot use corporal punishment. In fact, that was an even broader defence. That was just force to keep things under control. They can't. The only people who can be hit under Canadian law are children—two-year-olds, who are defenceless. They are completely dependent on their parents. I think this idea that it's only about keeping the law or doing nothing is a real red herring.

What I spend my life doing now is helping parents learn how to manage their frustration, how to understand why children do what they do and how to guide those children in a way that promotes their brain development, promotes their emotional development and keeps them safe. Why would we put into Canada's law in 2024 all the ways you can hit a child? That would be an international embarrassment.

• (0950)

[*Translation*]

Mr. Rhéal Éloi Fortin: Excuse me, I don't mean to be rude, but I have about a minute or less of my speaking time left. I want to make sure I cover the various aspects of this.

My colleague Mr. Mendicino, whom I hold in high regard, spoke earlier about corporal punishment being an assault on children.

As we know, these words have a very violent connotation. I think an act as extreme as assaulting a child is unacceptable as it is. However, section 43 mentions the use of force. I would like us to examine the distinctions we need to make. If I correctly understand your testimony, there are none to make. You say that the only people who can be hit are children.

That is obviously not what we want, but the idea of the use of force seems to me much broader than the act of hitting. The use of force could include all kinds of behaviours.

[English]

The Chair: You have 30 seconds.

[Translation]

Mr. Rhéal Éloi Fortin: That's why I liked the idea of distinguishing between those behaviours.

In your opinion, there is no distinguishing. Any use of force toward a child should be prohibited. Is that correct?

[English]

Dr. Joan Durrant: No, it's not. It's corrective force, section 43—force by way of correction, which means punishment.

Every other law like it around the world has been worded with things like “chastisement” or “punishment”. They've used those words. For some reason, when they codified Canada's Criminal Code, they used the word “correction”. It's about punishment. That law is about punishment, and the Supreme Court tried to create a new law, but they can't do that. We have many other defences—

The Chair: We'll now move, for the final six minutes in the first round, to the New Democratic Party and Mr. Garrison.

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

I want to start by saying how fortunate I think we are to have Dr. Durrant and Dr. Butler here, who have extensive experience in both in research and advocacy on the topic that's before us today. I want to start with a question for both of you that's really begun to perplex me this morning as we have these questions.

This committee recently dealt with coercive controlling behaviour in intimate partner relationships. We are seeking to amend the Criminal Code to prohibit forms of violence additional to physical violence. We've dealt with questions of elder abuse and have sought to make sure that elders in care are not subject to violence.

My question is for both of you, and I'll start with Dr. Butler.

I don't understand why somehow we're having a debate today about how much violence against children is acceptable when we don't have that debate about anybody else in our society. Maybe I'm asking you an impossible question, but it's a frustrating question for me this morning.

Dr. Kate Butler: It's a frustrating one for me too. I believe when we tell children that corporal punishment is still legal in Canada, we're saying that their humanity is valued less than that of adults, that our convenience trumps their rights, that they have to bend their self-expression to the will of adults.

Canada ranks very low among its peer countries in awareness of children's rights, so corporal punishment is both a symptom and a cause in that regard.

I'll pause there, because I know Dr. Durrant has something to add to this. Yes, I agree with you. We are not sending the right message to Canadian children that we value their rights.

Mr. Randall Garrison: Dr. Durrant.

Dr. Joan Durrant: We absolutely need to recognize children as human beings.

I think comments about parental authority... Parents don't lose their authority when they stop hitting children. They actually gain more authority. They gain more respect. We've learned from many studies that when children are punished in this way, they are afraid. They become dishonest and start to distance themselves from their parents. They don't go to their parents when they have problems because they're afraid of them. We need to help parents reduce the fear and strengthen the relationship. In other countries, there has been so much effort put into supporting parents. We need to do that in Canada.

We value families. Families are the centre. Families are precious. I am a parent and I am a member of a family. Families are the source of population health. The ultimate predictor of health is trust and attachment between parent and child. When we start hitting them, we start to erode and destroy that. We need to focus on building attachment, building strong families and building strong parent-child relationships. That's what I do every day of my life.

When parents ask me, “What do I do instead?”, I realize how poor a job we have done if we can't come up with a better solution than hitting. Corporal punishment is the training ground for coercive control. I think we all need to give some thought to the resentment, hostility and anger building up in children that can't be expressed but very well could be when they're caring for us. I think a lot of elder abuse is rooted in the experiences children had when they were young. That comes back to haunt us. We know clearly that children who are physically punished are more likely to bully, engage in dating violence and engage in intimate partner violence.

I will never forget a woman who told me, “When I was a child, my father would hit me and tell me he does it because he loves me. My entire life, I have only been involved with violent men. I've been held captive. I've been choked and strangled because they tell me they love me. I learned very young, when it was embedded in my brain, that violence equals love. That set me on a pathway and has been my entire life.”

We have to come to terms with this and realize what we're actually talking about. We're talking about using violence to coerce children. We're not talking about protection. We're not talking about putting them in car seats. We're not talking about pulling them out of traffic. We do that every day. We do that all the time. If we're worried about that, we should think.

The Supreme Court said on section 43 that there's no punishment of children under two. Those are the children most likely to be hit, actually. We all know why. They are very active and don't have much language. Have we seen a rush into the courts by parents of children under two? Have we seen a rush of apprehensions of children under two? The Supreme Court also said that hitting a child in anger or frustration is now against the law. How many parents are hitting children when they are not frustrated? Have we seen a rush of frustrated parents being pulled into the courts? No.

These are all red herrings. We're talking about a principle. The Standing Committee on Justice and Human Rights needs to understand that we are denying children the basic, most fundamental right to protection. Canada is a laggard. When I work internationally, which I do a lot—

• (0955)

The Chair: Thank you very much.

Dr. Joan Durrant: —people are shocked.

The Chair: I'm going to interrupt to start our second round. We will keep time, because we only have limited time left.

We will go to Ms. Gladu for five minutes.

Ms. Marilyn Gladu: Thank you, Chair, and thank you to all the witnesses for being with us today.

First I want to say that we've heard a lot today about people being choked or strangled, or children being assaulted or killed, and I want it to be clear on the record that these things are already illegal in Canada today. Regardless of what happens with section 43, those things are already illegal.

What we're talking about with section 43 is what kind of protection ought to be offered to parents and teachers in the reasonable raising of children. Look at the Supreme Court decision that upheld section 43 in 2004 and listen to what it had to say. I'm going to read from a study:

...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.

It goes on:

According to the [SCC] 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.

We know that when courts make decisions, they always talk about precedent cases, and they don't just talk about the law; they talk about the interpretation that people gave in those precedent cases. I believe the Supreme Court's interpretation, which was accepted in the majority...and honestly, from the views we've heard of the dissenters, even the dissenters would like what I just read to you.

My question is for ARPA. Do you think the private member's bill is necessary, considering that the Supreme Court has already upheld this?

• (1000)

Mr. John Sikkema: No. Obviously the private member's bill would fundamentally change the law. I know there's been some discussion of what other common law defences would then come into effect. The Library of Parliament's paper on this gives a helpful summary of that. It's just that there's a lot of vagueness around the de minimis defence, which has not really been applied in this context. The defence of necessity would clearly protect you when you pull a child out of the way of traffic, but would not defend you if you make a child go to a chair or stay in a chair for a time out. That's the line that Justice McLachlin used.

As for the de minimis defence, Justice Arbour in her dissent noted that this defence would need appropriate expansion to cover some of the things we wouldn't want to capture. Even in the dissenting opinion, there's a recognition that something in the law would need to change, whether through Parliament amending the law or through new judicial interpretations of that defence.

Just removing this provision and doing nothing else I think does cause problems that the Supreme Court had a view to avoiding.

Ms. Marilyn Gladu: What kind of negative consequences do you expect if this section is repealed?

Mr. John Sikkema: The Supreme Court noted in its judgment the importance of balancing the need of children to have safety, psychological integrity and well-being with their need for family integrity and family cohesion. It said that parents would not be subject to reports, investigation and prosecution—although possibly rarely—as that disrupts the family and is in that way damaging to children.

Ms. Marilyn Gladu: Having had children myself, I would say that if you have a three-year-old and want to get them out the door in the morning and put their shoes on, you may find you have a struggle and they don't want to put their shoes on. You can ask them multiple times, but they don't, and you end up having to forcibly get them on your lap and put their shoes on. This is the kind of forcible restraining that I think people are worried about when they see the repealing of this section.

My daughter is a teacher at a school where, as we've heard, there is increasing violence. Students attacked her with a knife when she was pregnant. Being able to restrain the child and taking the child to the principal's office are protections for other children as well as the teachers.

It would be concerning to me to see this repealed altogether. What would be your opinion about that?

That's for John again.

The Chair: You have 15 seconds.

Mr. John Sikkema: I don't think removing this is the only way to deal with the abuses that children face and that they're—

The Chair: Thank you for that.

Again, if there is anything that anybody wishes to say that we haven't had time for today, please send it to us in writing.

I will now move to Madam Brière for five minutes.

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

Thank you to all our witnesses.

I will ask my questions in French.

[*Translation*]

Ms. Butler, what's the balance between protecting children from corporal punishment and the fact that it isn't in the best interests of the child or our justice system to impose criminal sanctions on parents and teachers for these physical acts?

• (1005)

[*English*]

Dr. Kate Butler: Thank you very much for the question. I appreciate that you're bringing in the best interests of the child.

First of all, I would say that parental rights are not in conflict with children's rights. Parents have a duty and they are responsibility bearers. They need to uphold children's rights.

I want to think about the international context. Dr. Durrant has already mentioned New Zealand and Sweden. I'd also like to mention Ireland and Wales.

What we see when we look at what has happened worldwide is that police and the justice system are not pulling in parents for these kinds of situations. Instead, we're seeing many more positive parenting programs that are giving parents different options when this kind of situation occurs.

I'd also note that if you've read some of the letters that I believe came to the committee, you'll see the only cases that do get prosecuted are cases where children have been beaten very severely in the home. Having this total ban on corporal punishment is really important.

I want to pick up on one other point, which is that we're not saying that you can never use force in a case of safety, like the two-finger thing. I have a three-year old. If she's going to touch the stove, of course I can pull those two fingers away for safety, but I'm not afterwards going to slap her really hard on her two fingers. There's a difference between safety and punishment afterwards. I just wanted to say that.

Mrs. Élisabeth Brière: Thank you.

Dr. Durrant, would you like to add something?

Dr. Joan Durrant: Yes, thank you.

I think it's important that we're all aware that parents, teachers, early childhood educators, group home workers, youth care staff and everyone who cares for another person have a legal duty of care. If a parent did not put a child in a car seat, did not pull a child out of traffic or did not pull a child's hand back from the stove, they could be charged with negligence because they have a required legal duty of care. They are responsible for the care and protection of children.

What we're trying to end is acts of aggression, coercion and violence against children. We have a legal duty to care.

The Chair: I'm sorry, Dr. Durrant, but I noticed that bells are ringing in the chamber. I need consent from all members to continue with the next seven minutes of this committee.

Do I have consent?

An hon. member: No.

The Chair: Okay.

Thank you very much to the witnesses for coming. It's 10:08, so we were going to finish in five minutes.

If there is anything you would like to add, please send it to us in writing.

There's one thing I wanted to decide with the committee, and if we have to, we will send it in writing. We know that on Monday we will continue with this study. I need to get a bit of feedback on whether we can do clause-by-clause on Thursday of next week. If so, we will be seeking to receive any amendments by Tuesday at noon. That would be the deadline.

[*Translation*]

Mr. Rhéal Éloi Fortin: What day are we talking about, Madam Chair? Is it Wednesday?

The Chair: No, it's Tuesday for sending amendments and Thursday for clause-by-clause.

[*English*]

You can speak to me if you want so we can make a decision.

Hon. Rob Moore: That is what we agreed to.

The Chair: I want to confirm that this is what we want.

Some hon. members: Agreed.

The Chair: Fabulous. Thank you very much. That's exactly what we will do.

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