

# OECTA Submission to the Standing Committee on Justice and Human Rights

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*Bill C-273, An Act to amend  
the Criminal Code (Corinne's  
Quest and the protection of  
children)*

ONTARIO ENGLISH  
Catholic  
Teachers  
ASSOCIATION

The Ontario English Catholic Teachers' Association (OECTA) represents the 45,000 passionate and qualified teachers in Ontario's publicly funded English Catholic schools, from Kindergarten to Grade 12.

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## **1. INTRODUCTION**

**1.01** The Ontario English Catholic Teachers' Association (OECTA) welcomes the opportunity to provide input on behalf of 45,000 teachers working in publicly funded Catholic schools in Ontario, as the Standing Committee on Justice and Human Rights considers Bill C-273, *An Act to amend the Criminal Code (Corinne's Quest and the protection of children)*.

### **1.02 About OECTA**

OECTA represents 45,000 passionate and dedicated teachers working in publicly funded Catholic schools across Ontario. Our Association is committed to protecting and promoting the quality and accessibility of publicly funded education in Ontario, as well as the rights and working conditions of our members. Catholic teachers are strong advocates for social and economic justice, and strive every day to best support the students we serve, and to strengthen the schools and communities where we work and live.

### **1.03 Background**

OECTA strongly supports the Truth and Reconciliation Commission of Canada's (TRC) Calls to Action (TRC 2015). Our Association has gone on record on numerous occasions to encourage both the provincial Government of Ontario and the federal Government of Canada to promote meaningful action toward addressing the TRC's Calls to Action.

**1.04** At the same time, as a union representing 45,000 professional teachers, it is incumbent upon us to highlight situations where proposed legislation may have unintended consequences. Such is the case with Bill C-273, which seeks to repeal

Section 43 of the *Criminal Code* of Canada (CCC) – that details the circumstances in which certain individuals, including teachers, may use physical contact deemed “reasonable under the circumstances” (CCC 1985 c. C-46 s.43). The legislation, as proposed, unintentionally has the potential to negatively impact our members and threaten the safety and security of everyone in the school environment.

**1.05** As discussion of Bill C-273 unfolds, it is important to remember that teachers are responsible adults who maintain the highest standards of professionalism. They work hard to create safe, healthy, and welcoming environments for everyone, and to forge positive relationships that will help students to learn and grow. In addition, as a provincial Association, we strive to educate our members on professional standards and boundaries.

**1.06** Just as students should expect a safe environment in which to learn, so too must teachers enjoy a safe environment in which to work – a right that is protected and guaranteed by provincial health and safety legislation (OHSA 1990).

**1.07** As such, there are several key considerations that the committee must take into account as it seeks to balance the necessity of respecting the TRC’s Calls to Action, while also ensuring the continued protection of teachers and students within the school environment.

**1.08** To this end, this submission presents information on:

- the current legal context of Section 43;
- the growing epidemic of violence and harassment in schools; and
- the potential and unintended consequences of Bill C-273, as proposed.

**1.09** OECTA is calling on the Standing Committee on Justice and Human Rights to review our concerns regarding Bill C-273, as outlined in the sections that follow. **We strongly urge the government to consider an amendment to the legislation, to ensure the specific protection of teachers and education staff within the *Criminal Code* for cases where, at times, reasonable physical intervention is necessary to maintain the safety and well-being of students, teachers, education workers, and other staff working and learning in schools.**

## **2. SECTION 43: CURRENT LEGAL CONTEXT**

**2.01** It is worth briefly outlining the current legal context surrounding Section 43 of the CCC, and its application with respect to the education sector.

**2.02** In a seminal case from 2004, *Canadian Foundation for Children, Youth and the Law v. Canada*, the Supreme Court of Canada upheld the constitutionality of Section 43. Writing for the 6-3 majority decision, Chief Justice Beverley McLachlin argued that Section 43 does not infringe upon a child’s right to security of the person (Section 7) or a child’s right to equality (Section 15), nor does it constitute cruel and unusual treatment or punishment (Section 12).

**2.03** In an analysis of the decision, lawyers Gretchen Brown and Karlan Modeste likened the protections that Section 43 offers to teachers to the situation involving health care workers: specifically, the requirement at times for health workers to have some form of physical contact in order to maintain safety – for themselves and others (Brown and Modeste 2019). Similarly, OECTA legal counsel has previously noted the purposeful limitations of Section 43, and highlighted that criminal sanctions remain possible in

situations that go beyond the prescribed scope, including a prohibition against using any form of physical force as a punishment for children (OECTA 2008).

**2.04** In this respect, as Don Stuart of Queen’s University’s Faculty of Law has outlined, Section 43 is a “justification section” – it operates by exonerating an accused individual who commits what would otherwise be a criminal act, because “there are circumstances which justify or excuse (legalize) [their] conduct” (Stuart 2007).

**2.05** Since the landmark 2004 decision, Section 43 has been used on a variety of occasions in Ontario and across Canada, to provide either a successful legal defense of a teacher or education worker, or in preliminary stages with legal counsel or law enforcement, prior to charges being laid.

**2.06** As will be outlined in subsequent sections, there is a persistent and growing need to ensure protections for teachers who take reasonable action to maintain the safety of students and others within the school environment. While OECTA opposes corporal punishment, and strongly endorses the TRC’s Calls to Action, it is also important to mitigate against potential unintended harm that may be caused by Bill C-273 and the repeal of Section 43 of the CCC.

### **3. VIOLENCE AND HARASSMENT IN SCHOOLS**

**3.01** In order to better understand some of the unintended negative consequences of Bill C-273, it is important to situate the proposed legislation within the growing crisis of violence and harassment in Ontario schools.

- 3.02** “Almost nine-in-ten teachers (89 per cent) indicate that they have experienced or witnessed violence or harassment in their schools” (OECTA 2017). The preceding quotation comes from an OECTA survey report released in 2017. In the seven years following this publication, incidents of violence and harassment in schools have only grown more frequent and severe – and to-date, the provincial government has done nothing of substance to address this critical issue.
- 3.03** Seemingly each week, news stories are published that describe the shocking details of violence and harassment experienced by teachers and education workers in Ontario – which range from verbal threats to physical assault (Mehrabi 2023; Ceolin 2023).
- 3.04** This anecdotal evidence is supported by data. A 2023 study by the Elementary Teachers’ Federation of Ontario (ETFO) found that “two-thirds of members say the severity of violent incidents has increased and 72 per cent say the number of incidents has increased since the beginning of the COVID-19 pandemic” (ETFO 2023). Similarly, a study from University of Ottawa researchers published in 2021 found that, of the 4,000 Ontario education workers surveyed, 89 per cent of respondents had “experienced a threat, attempt, or act of physical violence from one or more sources (students, parents, colleagues, administrators)” (Bruckert, Santor, and Mario 2021).
- 3.05** School boards across Ontario have reported similar findings. For instance, in October 2022, the Thames Valley District School Board – in southwestern Ontario – reported 900 incidents of school-based violence in one month (Rivers 2022). And over the course of the 2022-23 school year, more than 4,000 incidents of violence were reported at schools within the Hamilton-Wentworth District School Board (Brown 2023).



**3.06** Teacher unions, such as OECTA, have fiercely advocated for Premier Doug Ford’s Conservative government to address this complex and multifaceted issue. Unfortunately, thus far, the provincial government has completely abdicated its responsibility. For instance, the Association has demanded that the Ford Conservative government invest in comprehensive resources and supports, including more frontline, school-based child and youth workers, social workers, psychologists, and other professional services to help students deal with their social, emotional, and behavioural needs (OECTA 2024). Instead of heeding these calls, and seeking to address the root causes of this critical issue, the provincial government’s most recent budget only allocated a few thousand dollars per school for the limited purpose of installing security cameras (Government of Ontario 2024).

**3.07** As a result of the Ontario provincial government’s gross negligence, Ontario schools will almost certainly see a continued increase in incidents of violence and harassment – against teachers and between students. Teachers and students will continue to be put in increasingly dangerous situations, which could jeopardize the health and safety of everyone in the school environment.

**3.08** The growing crisis of violence and harassment in schools reinforces the need to ensure that any changes to the *Criminal Code* maintain protections for the safety and security of teachers, students, and staff.

#### **4. BILL C-273: POTENTIAL AND UNINTENDED CONSEQUENCES**

**4.01** Simply put, repealing Section 43 without amendments to the *Criminal Code* that permit teachers to intervene physically, when necessary, to protect students and

themselves, will produce unintended and negative consequences that diminish the safety and security of everyone in the learning environment.

**4.02** It does not take a great deal of creativity to imagine any number of real-world scenarios that occur within the school setting, and that involve some form of necessary and/or appropriate physical contact from a teacher – contact that would likely be avoided should Bill C-273 pass as proposed.

**4.03** For instance, consider a student who has a history of violent behaviours, including self-harm. Or a student who is in the midst of a mental health crisis and who finds calm in being redirected away from classroom overstimulation. Or a student who has a tendency to run when triggered, who suddenly sprints toward oncoming traffic.

**4.04** Each of the preceding examples, though hypothetical for the purposes of this brief, are based on real-world situations faced by teachers in schools across Ontario. However, if Section 43 is repealed without a sufficient replacement, a teacher would be less likely to take the necessary action to de-escalate or address the situation, for fear of being charged with assault. Regardless of the outcome of any court proceedings, the mere publication of allegations is a form of public shaming – one that pre-emptively convicts people in the court of public opinion, has tremendous impact on a person’s mental health, and unjustly denigrates the teaching profession.

**4.05** In such an environment, given the higher likelihood of assault charges being laid, teachers’ unions may be forced to advise members to refrain from *any* form of physical contact whatsoever. Somewhat ironically, this could ultimately result in *more* severe injuries to students and *more* calls to police.

**4.06** Within this context, it is also worth applying an equity and employment lens, as schools seek to improve representation in classrooms while also contending with a growing teacher recruitment and retention crisis.

**4.07** Internal OECTA census data indicate that the strong majority (73 per cent) of Catholic teachers identify as women. Looking more broadly at the demographics of teachers in Ontario, a 2023 study by the Ontario College of Teachers found that almost 91 per cent of Ontario teachers identify as “white or white and another identity” (OCT 2023). Add to this, an ongoing – and worsening – crisis in teacher recruitment and retention, where recent data suggests that “more than a quarter of Ontario’s schools experience teacher shortages every day, and nearly half experience daily shortages for educational assistants” (People for Education 2024).

**4.08** Given the persistent underrepresentation of Indigenous and equity-deserving communities in the teaching profession and the understaffing that continues to plague Ontario schools, it is difficult to imagine how an increasing threat of violence, coupled with a greater chance of facing criminal charges, will improve the attractiveness of teaching and entice people to enter the profession.

## **5. CONCLUSION**

**5.01** In sum, as proposed, Bill C-273 may create as many problems as it seeks to resolve. As noted in an earlier section, **OECTA strongly urges the government to strike the appropriate balance between respecting and acting upon the TRC’s Calls to Action, while amending Bill C-273 to include language that expressly protects students and teachers, and promotes safety and security within the school environment.**

**5.02** OECTA thanks the Standing Committee on Justice and Human Rights for receiving this submission. We will make ourselves available as needed should the committee have further questions.

## **6. WORKS CITED**

Brown, Desmond. (2023). "More education support workers needed in Hamilton to help stop violence in schools: union." *CBC News* (October 19).

Brown, Grnetechen, and Modeste, Gretchen. (2019). "Examining s.43 of the *Criminal Code* in the Context of Classroom Physical Interactions." CAPSLE 2019, Vancouver, Canada.

Bruckert Chris, Santor, Darcy, and Mario, Brittany. (2021). *In harm's way: The epidemic of violence against education support workers in Ontario*. Ottawa: University of Ottawa.

Ceolin, Caryn. (2023). "Concerns over classroom violence remain top issue for Ontario teachers." *CityNews* (September 19).

*Criminal Code of Canada (CCC)*, RSC 1985, c. C-46 s. 43. Available at: <https://laws-justice.gc.ca/eng/acts/C-46/section-43.html#:~:text=43%20Every%20schoolteacher%2C%20parent%20or,is%20reasonable%20under%20the%20circumstances>

Elementary Teachers' Federation of Ontario (ETFO). (2023). *ETFO all-member violence survey results, 2023*. Toronto: ETFO.

Government of Ontario. (2024). *2024 Ontario Budget: Building a Better Ontario*. Toronto: King's Printer for Ontario. Available at: <https://budget.ontario.ca/2024/pdf/2024-ontario-budget-en.pdf>

Government of Ontario. (1990). *Occupational Health and Safety Act, R.S.O. 1990, c. O.1*. Toronto: King's Printer for Ontario.

Mehrabi, Kimia Afshar. (2023). "Ontario teacher describes shocking violence in school in viral post." *blogTO* (October 19).

Ontario College of Teachers (OCT). (2023). *2023 Focus on Teaching: A Survey of Ontario Teachers*. Toronto: OCT. Available at: <https://www.oct.ca/-/media/PDF/Focus%20on%20Teaching/2023/2023%20Focus%20on%20Teaching%20EN.pdf>

English Catholic Teachers' Association (OECTA). (2024). *2024-25 Pre-budget Submission to the Standing Committee on Finance and Economic Affairs*. Toronto: OECTA. Available at: [https://www.catholicteachers.ca/OECTA/media/pdfs/Communications/Briefs%20and%20Position%20Papers/2024/PreBudget\\_24.pdf](https://www.catholicteachers.ca/OECTA/media/pdfs/Communications/Briefs%20and%20Position%20Papers/2024/PreBudget_24.pdf)

OECTA. (2017). *Workplace Violence and Harassment Against Teachers: Results of a Comprehensive Members Survey*. Toronto: OECTA.

OECTA. (2008). "Memo RE: Section 43 of the Criminal Code." Toronto: OECTA.

People for Education. (2024). "Staff shortages a daily issue for many Ontario schools." *People for Education* (March). Available at: <https://peopleforeducation.ca/our-work/staff-shortages-a-daily-issue-for-many-ontario-schools/>

Rivers, Heather. (2022). "Incidents of school violence have 'exploded.' What's the solution?" *London Free Press* (November 21).

Stuart, Don. (2007). *Canadian Criminal Law: A Treatise*. Toronto: Thomson/Carswell.

Truth and Reconciliation Commission of Canada (TRC). (2015). "Truth and Reconciliation Commission of Canada: Calls to Action." Winnipeg: TRC. Available at: [https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls\\_to\\_Action\\_English2.pdf](https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf)