



April 30, 2023

Hon. Senator Stan Kutcher  
Senate of Canada  
Ottawa, Ontario K1A 0A4  
By email to: [Stanley.Kutcher@sen.parl.gc.ca](mailto:Stanley.Kutcher@sen.parl.gc.ca)  
And to: [Megan.Little@sen.parl.gc.ca](mailto:Megan.Little@sen.parl.gc.ca) and [Lauren.Stokes@sen.parl.gc.ca](mailto:Lauren.Stokes@sen.parl.gc.ca)

**Re: End Corporal Punishment**

Dear Senator Kutcher:

I am writing to support your [Bill S-251](#), *An Act to repeal section 43 of the Criminal Code (Truth and Reconciliation Commission of Canada's call to action number 6)* in commemoration of the [International Day to End Corporal Punishment](#).

Using physical violence to discipline children is cruel and too often ineffective in achieving the over-arching goal of raising healthy children best suited to reach their full potential. Spanking can create lasting psychological harm. The vast majority of parents and others fiduciary care givers do not harm them for any reason. Because parents cannot exercise votes by proxy for their own children in federal elections, they are politically under-powered. Furthermore, because the federal government is not yet obliged to generally consider the best interests of the child in all contexts or to conduct child rights impact assessments of laws—analogueous to environmental impact assessments and gender-sensitive budgeting—children are systemically vulnerable.

It was a different time when the Supreme Court failed to fully strike down, section 43 of the *Criminal Code* in 2004, 19 years ago.<sup>1</sup> Repealing the exemption from prosecution was sensible enough for Prime Minister Justin Trudeau promise to do so in the weeks following his government's 2015 electoral success.<sup>2</sup> However, in the eight intervening years, that promise has not been realized.

The rationale that the federal government provided for failing to repeal section 43 when it appeared before the United Nations' Human Rights Council's Committee on the Right of the Child in May 2022 gave the misleading impression that the government is bound by the 2004 decision of the Supreme Court of Canada. However, the Court did not oblige the government to authorize violence against children by persons in authority. In partially denying the remedy sought by the Foundation for Children, Youth and the Law, the Supreme Court deferred to the Government's authority to criminalize conduct. Moreover, section 43 of the *Criminal Code of Canada* entitled "Protection of Persons in Authority, Correction of Children by Force" seems to be directly contrary to Canada's undertaking as a state party to the *Convention of the Rights of the Child*, namely, to protect children, not to protect the adults entrusted with fiduciary authority over children.

The Committee's [June 2022 Concluding Observations on Canada](#) repeated its 2012 Concluding Observations and its 1983 [General Comment Number 11](#) by stating that it: "urges [Canada] to: "Repeal Section 43 of the Criminal Code to remove existing authorization of the use of 'reasonable force' in disciplining children and explicitly prohibit all forms of violence against all age groups of children within the family, in schools and in other institutions where children may be placed." The Committee's resumes its review on January 11, 2027.

I wish you every success in advancing your bill in Parliament and commend your efforts.

Respectfully submitted,

A handwritten signature in blue ink that reads "Bill Jeffery".

Bill Jeffery, BA, LLB, Executive Director and General (Legal) Counsel  
Centre for Health Science and Law

## Endnotes

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<sup>1</sup> *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, aff'g (2002), 57 O.R. (3d) 511 (C.A.), aff'g (2000), 49 O.R. (3d) 662 (S.C.) ["CFCYL v. Canada"] Available at: <<https://canlii.ca/t/1g990>>

<sup>2</sup> Joanna Smith, Liberal government commits to repealing so-called 'spanking law' The Liberal government plans to repeal a section of the Criminal Code that protects parents and teachers who use spanking and other 'reasonable' force against children. *Toronto Star*. December 15, 2021. Available at: <https://www.thestar.com/news/canada/2015/12/21/liberal-government-commits-to-repealing-spanking-law.html>