



**Quebec Provincial Association of Teachers**  
**L'Association provinciale des enseignantes et enseignants du Québec**

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**Quebec Provincial Association of Teachers' Brief for the Standing  
Committee on Justice and Human Rights' Study of Bill C-273**

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**April 2024**

The Quebec Provincial Association of Teachers (QPAT) is composed of 10 local unions representing 8,000 teachers from all sectors teaching in the nine English School Boards and the Littoral Service Center in Quebec. QPAT is a member of the Canadian Teachers' Federation (CTF) and negotiates in Cartel alongside the *Fédération des syndicats de l'enseignement du Québec* (FSE/CSQ).

The object of this brief is to present QPAT's position to the Standing Committee on Justice and Human Rights in the context of the examination of Bill C-273 implying the repeal of section 43 of the Canadian Criminal Code. QPAT fully supports the spirit of the 94 recommendations and its call to action stemming from the Commission on Truth and Reconciliation (CTR). Notably, QPAT has been extremely active in addressing its recommendations in relation to education for reconciliation by demanding that substantial modifications be made to Quebec's Canadian History curriculum to not only include IRS but to substantially modify the way Aboriginal content is integrated in curricula. However, the sixth call to action recommending the repeal of s. 43 of the Canadian Criminal Code, removing all existing safeguards for teachers and education workers, is cause for great concern for both QPAT and other CTF member organizations. QPAT's position is not intending to question the years of abuse suffered by Indigenous peoples in residential schools, nor is it putting into question the important symbolic value of the repeal of s. 43 of the Canadian Criminal Code, which, we acknowledge, symbolizes the past reality of the practice of corporal punishment, both institutionally and domestically. To the contrary, QPAT's position on corporal punishment is aligned with CTF's long-standing position, strongly opposing the application of any form of corporal punishment by persons in authority, no matter the context.

Nevertheless, QPAT is very concerned that the complete removal of s. 43 without replacement language would put at risk teachers and other education workers who are often required to intervene physically, when necessary, to protect students and, in some cases, themselves. Fully aware of the intent behind the tabling of such a Bill, it is essential to ensure that its adoption is not leading to unintended and unfortunate consequences for the teachers we represent.

This is why QPAT is joining the other member organizations of the Canadian Teachers' Federation in demanding that the Standing Committee on Justice and Human Rights takes our concerns into account and includes an amendment to the legislation that guarantees protections for teachers and educational workers within the Criminal Code in cases where the use of reasonable force is required to ensure the safety and well-being of our students, or of the teachers themselves. Please refer to the following proposed language drafted by the CTF and their legal counsel:

**265 (5) This section does not apply to a teacher or other education worker who applies force that is reasonable in the circumstances towards a child that is under their direct or indirect supervision relating to the following purposes:**

**(a) protecting the safety of the child; or**

**(b) preventing the child from causing bodily or emotional harm to themselves or to other persons.**

**(6) For the purposes of subsection (5), “force that is reasonable in the circumstances” means force of a transitory or trifling nature.**

**(7) For the purposes of paragraph (5)(b), “other persons” includes other students, the teacher or other education worker applying force, and other individuals.**

QPAT's position is based on the following elements:

- ❖ The context in which teachers are currently exercising their profession.
- ❖ Examples of common situations which may require the use of reasonable force by teachers to ensure the safety and well-being of their students.
- ❖ The expected unintended consequences of the repeal of s. 43 on teachers and on their capacity to ensure the safety and well-being of their students in our public schools.
- ❖ QPAT's experience in dealing with allegations of a criminal nature filed against teachers.
- ❖ The current teacher recruitment and retention crisis in Quebec and across Canada.

## **The context in which public school teachers are currently exercising their profession**

Before focusing on the expected consequences of the repeal of s. 43 of the Canadian Criminal Code, it is important for the members of the Committee to be presented with a portrait of the reality teachers in our public schools are facing today, namely regarding the complexity of the classroom composition and the increased levels of violence in schools.

In recent years, data collected through QPAT's research studies on the broad issue of the **organization of services for students with special needs**<sup>1</sup> and a recent study conducted by the University of Concordia on **services to special needs students**<sup>2</sup> shows that:

- The English public school system has experienced a substantial increase in the proportion of students with special needs in schools in the recent years.
- Data from the Concordia University research shows that:
  - Between 2001 and 2016, the number of special needs students has increased by 122.3%.
  - The rate of integration into regular classes has reached 88.1%.
  - From 2000 to 2018, the proportion of all provincial complaints to the *Commission des droits de la personne et des droits de la jeunesse (CDPDJ)* on Services for Special Needs Students related to the English Language Public School system increased from 4 to 30% confirming that the access to specialized professional support services is increasingly difficult in the English-language public schools.
- In a context of the inclusive classroom, teachers from all levels in Quebec's English-language school system are faced with increasingly heavy and complex classroom compositions.
- The data from the 2019–2020 research conducted by QPAT further confirms that professional and specialized support resources are lacking are often inadequate

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<sup>1</sup> Appendix B attached herewith

<sup>2</sup> Appendix D attached herewith

and insufficient to ensure that students with special needs and teachers are provided with quality supports and services.

- The lack of sufficient and adequate resources in a classroom with an increasingly complex composition makes it significantly more difficult to provide a quality education for all students and to manage their behaviors.
- Data from QPAT's research also shows that events of violence experienced by teachers are more frequent.
- The teachers in specialized classes composed of students with extremely high needs at the elementary are particularly exposed to daily physical aggressions. Like many of their colleagues, they have accepted those incidents as a normal part of their job.

Research findings from QPAT's survey on **violence in the workplace**,<sup>3</sup> show that:

- In recent years, QPAT has noticed an increased number of health and safety issues, grievances related to violence in the workplace, and absenteeism related to such incidents.
- More than half of the teachers (56%) experienced one or more violent incidents during the period in question.
- More than 50% of the teachers felt that the number of violent incidents was increasing.
- Of the four vectors of violence experienced by teachers, students were the most frequent perpetrators at 47%, followed by parents (33%), co-workers (27%) and administrative staff (20%).
- Of the types of violence experienced by teachers, psychological violence is the most frequent of all vectors. Physical violence by students and cyberbullying from parents is also reported regularly.
- Furthermore, many teachers have confirmed that, over time, they have accepted daily aggressions as part of the teaching job.

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<sup>3</sup> Appendix A attached herewith

Because of those results, QPAT has taken steps to sensitize its members to the importance of systematically reporting events of violence and QPAT's local unions continue collecting data at the local level. Rather than improving, the situation has deteriorated, and the events of violence experienced by teachers have become more frequent. In many of those situations, teachers were required to intervene physically to protect their students.

QPAT's local unions are advising teachers to, as much as possible, stay away from situations where they might be exposed to physical violence and to systematically request additional support resources and help from specialized resources. However, in some cases, the insufficient and inadequate level of resources leaves them with no alternative but to intervene themselves.

Statistics released recently by the *Commission des normes, de l'équité, de la santé et de la sécurité au travail (CNESST)* from Quebec<sup>4</sup> further confirm that teachers, like other workers, are more exposed to increased levels of violence in the place of work. The data shows, notably, that:

- The accepted injuries related to physical aggressions by students towards teachers have been steadily increasing from 2018 to 2021.
- It is important to reiterate that, while the numbers do not seem very high, the accepted injuries represent only a small fraction of the events of violence experienced daily by teachers because the great majority of physical aggressions towards teachers do not lead to claims at the CNESST or are either trivialized by school administration or not reported.

**Our objective here is not to depict an overly negative portrait of the reality of our public schools but rather to share with you the situations that a great proportion of classroom teachers are confronted with daily. The data collected in the past eight years demonstrates that the conditions in which teachers are currently practicing their profession, particularly at the elementary level, combined with a lack of**

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<sup>4</sup> Appendix C attached herewith

sufficient and adequate support resources, expose them more frequently than before to situations which may require the use of reasonable force to ensure the safety and well-being of their students. Considering the context, the absence of protections within the Canadian Criminal Code would expose them to undue risk in the exercising of their profession.

**Examples of common situations which may require the use of reasonable force by teachers to ensure the safety and well-being of their students:**

Given the context teachers are faced with in our schools today, the level of inclusion of students with special needs in the English Language Public School System, and the lack of adequate specialized support resources, situations where the use of reasonable force by teachers may be required are far from being exceptional and occur daily in some more specialized school environments. Here are a few examples of such situations:

- Guiding a student by the sleeve, or pulling a student from the path of an oncoming vehicle as the student runs into the street;
- Redirecting or intervening to break up a fight between students;
- Keeping a student from exhibiting dangerous behavior during a school outing (ski trip, out of country school trip, etc.);
- Restraining a student whose actions are posing a harm to themselves or others;
- Redirecting a student with a history of running away from the school or school yard to ensure their safety;
- Redirecting a student, who has a history of tantrums or violent meltdowns when triggered, by leading the student from the classroom to a designated location in the school.

**We could very easily find other examples of situations teachers are faced with daily when in the presence of their students or at school. It is essential for the Committee to consider that these situations are not exceptional in the current school context and occur on a regular basis in certain schools or school settings. Once again, the**

**absence of any safeguards for teachers and other educational workers could place at them at risk simply for performing their job.**

### **Unintended Consequences of the Repeal of Section 43 for Teachers**

Based on the opinion of our legal experts and on the experience of jurisdictions across Canada, the removal of the protections included in s. 43 would pose a serious risk to teachers and other categories of educational workers interacting daily with students. Given the daily reality experienced by teachers in our schools, the legal vacuum thus created would necessarily expose them to an increased risk of criminal charges, prosecution or even convictions for interventions involving the exercise of reasonable force against a student carried out in the course of their duties. These interventions would automatically be considered assault under section 265.1 of the Canadian Criminal Code.

In its 2004 decision, the Canadian Supreme Court is citing the Law Reform Commission of Canada on the possible consequences of the repeal of s. 43: “Concluding that s. 43 should not be repealed, the Law Reform Commission of Canada pointed out that repeal ‘could have unfortunate consequences, consequences worse than those ensuing from retention of the section [...]’”<sup>5</sup>

In paragraph 62 of the 2004 decision, the Supreme Court states: “The reality is that without section 43, Canada’s broad assault law would criminalize force falling far short of what we think of a corporal punishment, like placing an unwilling child in a chair for 5 minutes ‘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.”

It is also important to note that the Supreme Court’s 2004 decision significantly limited the scope of s. 43 of the Criminal Code by, among other things, eliminating any reference to

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<sup>5</sup> Appendix E attached herewith



the administration of corporal punishment. In addition, it helped to clarify the concept of reasonable force while including guidelines for the age of children or students. As a result, s. 43 has not been used in the defense of teachers or education workers when the use of reasonable force was used for correction purposes.

In short, given the context and the conditions in which Quebec and Canadian teachers are exercising their profession, the repeal of s. 43 without amendments to include replacement language would increase the risk for teachers of being faced with possible criminal assault charges for interventions of a physical nature aimed at ensuring the safety and well-being of their students. As a result, QPAT and its local unions would have no choice but to advise teachers to avoid intervening physically with students under any circumstances which, in the current context, could put children in harm's way.

### **QPAT's experience in addressing allegations of a criminal nature filed against teachers:**

Given the specific structure and size of QPAT, all legal representation in litigation (grievance arbitration, health and safety issues, criminal cases, etc.) is handled at the provincial level. In situations where allegations of a criminal nature are filed against a teacher in the context of their professional functions, QPAT provides legal representation to its members and all cases are referred to a specific law firm. This gives us a unique view and perspective on the situation province wide.

In the past 25 years, of all the cases which led to a complaint filed against educators in Quebec, only a few ended up with formal accusations in court where s. 43 has been used as an argument for defense. Notably, the 2009 decision rendered in R. c. Chouinard<sup>6</sup> is one of the few examples where s. 43 was invoked by the judge to acquit the accused. Criminal lawyers representing QPAT members in such cases confirm that, while s. 43 will rarely formally appear in decisions, it is always considered by the stakeholders involved in the judiciary process (police investigators, defense lawyers, prosecutors, judges, etc.)

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<sup>6</sup> Appendix F attached herewith

as soon as a complaint has been filed, often leading to a dismissal of the complaint before formal accusations are filed or before it moves to trial, particularly when the actions of educators were linked to their responsibilities to maintain a safe school environment. It is also of their opinion, that the removal of the protections provided in s. 43 could lead prosecutors, no longer able to use their discretionary power in those matters, to systematically press criminal charges for assault against educators who may intervene physically with a student to ensure a safe school environment.

Finally, it is essential to not minimize the impact on teachers of such allegations on the individuals concerned, their family and their careers. While the great majority (95%) of allegations against teachers have been unfounded, the teachers targeted by such allegations are automatically suspended by their employer pending investigation, sometimes with pay and often without pay. Furthermore, the delays involved in completing the investigation and proceedings could easily go beyond a full school year if not more and this, even before formal accusations are formally pressed against them. In many cases, these unfortunate situations could lead to ending their careers or, at least, strongly affecting their future ability to perform their duties as teachers. QPAT is of the opinion that the repealing of s. 43 would result in increasing allegations of criminal assault against teachers as well as prosecutions for actions which should not be criminalized.

### **The current national crisis in recruitment and retention of teachers in Quebec and across Canada:**

In recent years, the public education systems across the country have been faced with increasing challenges in recruiting and retaining teachers in the profession. Before 2020 in Canada, teacher shortages were primarily experienced in rural and remote communities or in French first language schools in minority settings. Since then, while it is noticeable that the COVID-19 pandemic has exacerbated the problem, the deterioration of working conditions in our public schools, the continuous devaluing of the teaching profession combined with insufficient investment in publicly funded public education systems led to the recruitment and retention crisis we are experiencing today.

In the province of Quebec, data shows that, the situation has not improved despite continuous efforts made by teacher unions to advocate for better working conditions for teachers and improved learning conditions for students, be it through ongoing campaigns or through the negotiation process. Teacher attraction and retention will remain a central issue in the coming years.

Main factors contributing to teacher shortage in Quebec:

- Statistics show that, in Quebec, one in four qualified teachers (25%) leaves the profession within the first five years of their career.
- In great part due to difficulties of coping with difficult working conditions, there has been a continuous increase in the proportion of teachers going on medical leave.
- Since the pandemic, a greater proportion of teachers tend to retire earlier.
- Recent projections from Quebec's Ministry of Education show that more than 10,000 full time teaching positions will need to be filled yearly to meet the needs of our public school system across Quebec. On average, fewer than 3,500 qualified teachers graduated yearly from Quebec universities' education programs in the past five years, causing a huge, anticipated deficit.
- To make matters worse, and even though the projected needs will be greater in the coming years, the number of graduates from Quebec's education programs have continuously decreased in the past five years, from close to 3,500 graduates in 2018 to less than 3,200 in 2022. In addition, we need to consider that a portion of the graduates will continue dropping out of the profession yearly, and that there is always a portion of the graduates who will leave the province to work abroad or in other Canadian provinces.
- Furthermore, the substantial and rapid increase of the Canadian population in recent years due to higher levels of immigration, temporary workers and flow of refugees constitutes an added pressure on public education systems in Quebec and across the country, generating additional needs for building new schools and hiring school personnel, including teachers.

**Although there does not seem to be a direct link between the major challenge posed by the national recruitment and retention crisis in our public education system and the repeal of s. 43 of the Canadian Criminal Code, it is clear for QPAT that the disappearance of the safeguards guaranteed within s. 43 for teachers and education workers would risk exacerbating the current crisis. In the absence of replacement language, potential teachers might be discouraged to embrace teaching as a profession if it means there is an added risk of being faced with possible criminal assault charges for simply doing their jobs.**