



March 21, 2007

The Honourable Robert Douglas Nicholson  
Minister of Justice and Attorney General of Canada  
284 Wellington Street  
Ottawa ON K1A 0H8

Dear Minister Nicholson:

**Re: Grey Bruce Health Unit Resolution #2007-31 regarding the Joint Statement on Physical Punishment of Children and Youth & Repeal of Section 43 of the Criminal Code of Canada**

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It is the position of the Board of Health of the Grey Bruce Health Unit that physical punishment must be eliminated if we are to ensure the protection of the most vulnerable members of society.

To that end, meeting on March 16, 2007, the Board of Health, in support of Haliburton, Kawartha, Pine Ridge District Health Unit Resolution 2006-79 *Joint Statement on Physical Punishment of Children and Youth*, and Resolution 2006-80 *Repeal of Section 43 of the Criminal Code of Canada*, (attached) passed the following resolution and we respectfully request your support of, and action on this matter.

Date: March 16, 2007

Moved By: Mitch Twolan

Resolution #2007-31

Seconded By: Ruth Lovell

**WHEREAS**, the Board of Health of the Grey Bruce Health Unit supports Resolution 2006-79 *Joint Statement on Physical Punishment of Children and Youth* and does also support Resolution 2006-80 *Repeal of Section 43 of the Criminal Code* as distributed by the Hailburton, Kawartha, Pine Ridge District Health Unit; and

**WHEREAS**, Article 19 of the United Nations Convention on the Rights of the Child, signed by Canada in 1990, states participants should implement “appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”; and



**WHEREAS**, the McCain and Mustard *Early Years Study* (1999) emphasizes the importance of experiences and environments on child development and supports the active engagement of parents, through parenting education both prenatally and throughout childhood; and

**WHEREAS**, Public Health Units provide effective parenting strategies as an alternative to physical punishment including the development and distribution of resources, parenting classes, support group workshops, well baby clinics, developmental screening, home visiting assessment and follow-up, health education;

**THEREFORE BE IT RESOLVED THAT** the Board of Health of the Grey Bruce Health Unit endorse the Joint Statement on Physical Punishment of Children and Youth; and

**BE IT FURTHER RESOLVED THAT** the Board of Health of the Grey Bruce Health Unit support the *Repeal of Section 43 of the Criminal Code* and write to the Minister of Justice indicating Grey Bruce Health Unit's position and urging swift action on this matter; and

**FURTHER THAT** the Grey Bruce Health Unit Board of Health write a letter encouraging other organizations in the Counties of Grey and Bruce that work with children to endorse the *Joint Statement on the Physical Punishment of Children and Youth* (September 2004); and

**FURTHER THAT** copies of this resolution be sent to all local Members of Parliament, local Members of Provincial Parliament, all Member Municipalities, all Ontario boards of health, all local Boards of Education and local organizations that work with children, for support.

Building Healthy Communities Together,

*Original Signed By*

Hazel Lynn, MD, FCFP, MHSc  
Medical Officer of Health

HL/st

Enclosures: (2)



cc: The Right Honourable Stephen Harper  
The Honourable Monte Kwinter, Minister of Community and Social Services  
The Honourable Mary Anne Chambers, Minister of Children and Youth Services  
The Honourable Jim Watson, Minister of Health Promotion  
The Honourable Larry Miller, MP, Bruce-Grey-Owen Sound  
The Honourable Bill Murdoch, MPP, Bruce-Grey-Owen Sound  
Dr. George Pasut, Chief Medical Officer of Health (A)  
John Tory, MPP, Dufferin-Peel-Wellington-Grey  
Carol Mitchell, MPP, Huron-Bruce  
Jim Wilson, MPP, Simcoe-Grey  
Association of Local Public Health Agencies (alPha)  
Ontario Public Health Association (OPHA)  
Member Municipalities  
Ontario Health Units  
Local Children's Agencies



March 21, 2007

Dear Colleague:

**Re: GBHU Resolution #2007-31 regarding the Joint Statement on Physical Punishment of Children and Youth & Repeal of Section 43 of the Criminal Code of Canada**

It is the position of the Board of Health of the Grey Bruce Health Unit that physical punishment must be eliminated if we are to ensure the protection of the most vulnerable members of society.

Meeting on March 16, 2007, in support of Haliburton, Kawartha, Pine Ridge District Health Unit Resolution 2006-79 *Joint Statement on Physical Punishment of Children and Youth*, and Resolution 2006-80 *Repeal of Section 43 of the Criminal Code of Canada* (attached), the Board of Health passed the above noted resolution and we respectfully request your support on this matter.

The resolution endorses the national *Joint Statement on Physical Punishment of Children and Youth* (September 2004). Based on an extensive review of research, the *Joint Statement* provides an overview of the developmental outcomes associated with the use of physical punishment. This document concludes that physical punishment of children and youth plays no useful role in their upbringing and poses only risks to their development. It recommends that all organizations serving children and their families take action to end its use.

As identified by the groundbreaking McCain and Mustard *Early Years Study* (1999) and *Invest in Kids* research (2003), Public Health provides parenting education prenatal and throughout childhood, to ensure children have positive experiences through active engagement of their parents.

The resolution also supports and urges the swift repeal of Section 43 of the Criminal Code of Canada. Section 43 allows physical punishment of children by teachers, parents and those standing in place of parents, and provides a defense to a charge of assault if the court considers the punishment to be “reasonable under the circumstances.”

The constitutionality of Section 43 was unsuccessfully challenged at the Supreme Court of Canada. Although the January 2004 decision of the Supreme Court places limitations on the punishment of children, it continues to send the message that physical punishment is acceptable for children between ages two and 12. This undermines the efforts of Public

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Health and our community partners to educate parents about the negative effects of physical methods of discipline.



A repeal of Section 43 will send a clear message that Canadian children have the right to the same protection from assault as all other Canadian citizens. By repealing Section 43 the Canadian government will demonstrate that it does not condone the use of physical punishment of children, and it will strengthen our efforts to promote more positive methods of discipline. As indicated in our resolution, repeal of Section 43 will also finally bring Canada into compliance with the United Nations Convention on the Rights of the Child, which Canada signed onto in 1990.

On April 5, 2006, Senator Celine Hevieux-Payette introduced Bill S-207 to the Senate calling for repeal of Section 43. Currently, the Bill is still only at a second reading.

The attached letter has been forwarded to The Honourable Robert Douglas Nicholson, Minister of Justice and Attorney General of Canada, requesting his support for the repeal of Section 43.

Your support of the positions taken in our resolution will reinforce the message that to protect and promote health, physical punishment must be eliminated.

Building Healthy Communities Together,

*Original Signed By*

Hazel Lynn, MD, FCFP, MHSc  
Medical Officer of Health

HL/st

Enclosures: (3)

NOV 20 2006

November 13, 2006

Dear Colleague

**Re: HKPRDHU Resolution regarding the Joint Statement on Physical Punishment  
HKPRDHU Resolution regarding the Repeal of Section 43 of the Criminal Code of  
Canada**

At the Regular Board of Health Meeting of June 22, 2006, the Board of Health for the Haliburton, Kawartha, Pine Ridge District Health Unit passed the above-noted resolutions, and respectfully requests your support of, and action on these resolutions.

The first resolution endorses the national *Joint Statement on Physical Punishment of Children and Youth* (September 2004). Based on an extensive review of research, the *Joint Statement* provides an overview of the developmental outcomes associated with the use of physical punishment. The document concludes that physical punishment of children and youth plays no useful role in their upbringing and poses only risks to their development, and recommends that all organizations serving children and their families take action to end its use. To date over 200 organizations and individuals have endorsed this document.


The second resolution supports and urges the swift repeal of Section 43 of the Criminal Code of Canada. Section 43 allows physical punishment of children by teachers, parents, and those standing in the place of parents, and provides a defense to a charge of assault if the court considers the punishment to be "reasonable under the circumstances."

The constitutionality of Section 43 was unsuccessfully challenged at the Supreme Court of Canada. Although the January 2004 decision of the Supreme Court places limitations on the punishment of children, it continues to send the message that physical punishment is acceptable for children between ages two and 12. This undermines the efforts of health units and other family-focused organizations that educate parents about the negative effects of physical methods of discipline.

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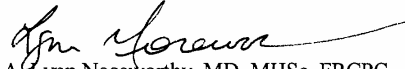
For almost 30 years there have been calls from government committees, individual Members of Parliament, children's services providers, and professional organizations to repeal Section 43 of the Criminal Code. Repeal of Section 43 will send a clear message that Canadian children have the right to the same protection from assault as all other Canadian citizens. By repealing Section 43 the Canadian government will demonstrate that it does not condone the use of physical punishment of children, and it will strengthen our efforts to promote more positive methods of discipline. Repeal of Section 43 will also finally bring Canada into compliance with the United Nations Convention on the Rights of the Child, a Convention Canada ratified in 1991. On April 5, 2006, Senator Celine Hervieux-Payette introduced Bill S-207 to the Senate calling for repeal of Section 43. Seven months later, the Bill is still only at second reading.

The attached letter has been forwarded to the Honourable Minister of Justice, Mr. Vic Toews, requesting his support for the repeal of Section 43 and advocacy for its swift passage.

Your support of the positions taken in these resolutions will reinforce the message that physical punishment must be eliminated if we are to ensure the protection of the most vulnerable members of our society.

Yours truly

BOARD OF HEALTH FOR THE HALIBURTON, KAWARTHA,  
PINE RIDGE DISTRICT HEALTH UNIT



A. Lynn Noseworthy, MD, MHSc, FRCPC  
Medical Officer of Health

c.c. Rick Norlock, MP, Northumberland Quinte West  
Barry Devolin, MP, Haliburton Kawartha Lakes Brock  
Lou Rinaldi, MPP, Northumberland  
Laurie Scott, MPP, Victoria Haliburton Brock  
Member Municipalities  
Ontario Health Units  
John Mackie, PVNC Catholic District School Board  
Sylvia Terpstra, KPR District School Board  
Kathy Verduyn, Tillium Lakelands District School Board  
Local Children's Agencies

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Joint Statement on Physical Punishment of Children and Youth

Moved by Mr. Rowden

Seconded by Mrs. Godawa

“WHEREAS, research indicates that physical punishment is still widely used and can have serious consequences for children; and

WHEREAS, Public Health Units are required under the Child Health Mandatory Health Program to implement strategies that will increase the percentage of children and youth who meet physical, cognitive, communicative and psychosocial developmental milestones and increase effective parenting ability in high-risk families; and

WHEREAS, the national Joint Statement on Physical Punishment of Children and Youth (September 2004) sets out a clear position against the use of physical punishment based on a review of the most recent literature; and

WHEREAS, the Ontario Public Health Association (OPHA) and the Canadian Public Health Association (CPHA) have resolved to endorse the Joint Statement on Physical Punishment of Children and Youth ( September 2004);

THEREFORE BE IT RESOLVED that the Haliburton, Kawartha, Pine Ridge District Health Unit Board of Health endorse the Joint Statement on Physical Punishment of Children and Youth (September 2004); and

BE IT FURTHER RESOLVED that the Haliburton, Kawartha, Pine Ridge District Health Unit Board of Health write a letter encouraging other organizations in the Counties of Haliburton and Northumberland and the City of Kawartha Lakes that work with children to endorse the Joint Statement on the Physical Punishment of Children and Youth (September 2004)

AND FURTHER THAT copies of this resolution be sent to all local Members of Parliament, local Members of Provincial Parliament, all Member Municipalities, all provincial health units, all local Boards of Education, and local organizations that work with children for support.”

Carried unanimously  
2006-79

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NOV 20 2006

November 13, 2006

The Honourable Vic Toews  
Minister of Justice  
House of Commons  
Ottawa, ON K1A 0A6

Dear Mr. Toews

**Re: Repeal of Section 43 of the Criminal Code of Canada**

The Board of Health for the Haliburton, Kawartha, Pine Ridge District Health Unit views the physical punishment of children as a serious public health concern. There is substantial evidence that children exposed to physical punishment are at risk for serious consequences to their physical, mental, emotional and social well being. The Haliburton, Kawartha, Pine Ridge District Health Unit strongly advocates for the prevention of all abusive behaviour towards children and specifically advocates for the use of effective discipline strategies that do not harm a child. Section 43 of the Criminal Code of Canada justifies physical punishment of children by teachers, parents, and those standing in the place of parents, thereby conflicting with the goals of the Haliburton, Kawartha, Pine Ridge District Health Unit to promote non-violent discipline.

Although the January 2004 decision of the Supreme Court of Canada on Section 43 places limitations on the punishment of children, it continues to send the message that physical punishment is acceptable for children between ages two and 12. This undermines the efforts of health units and other family-focused organizations that educate parents about the negative effects of physical methods of discipline.

For almost 30 years there have been calls from government committees, individual Members of Parliament, children's services providers, and professional organizations to repeal Section 43 of the Criminal Code. Repeal of Section 43 will send a clear message that Canadian children have the right to the same protection from assault as all other Canadian citizens. By repealing Section 43 the Canadian government will demonstrate that it does not condone the use of physical punishment of children, and it will strengthen our efforts to promote more positive methods of discipline. Repeal of Section 43 will also finally bring Canada into compliance with the United Nations Convention on the Rights of the Child, a Convention Canada ratified in 1991.

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The Honourable Vic Toews  
November 13, 2006  
page 2

On April 5, 2006, Senator Celine Hervieux-Payette introduced Bill S-207 to the Senate calling for repeal of Section 43. Seven months later, the Bill is still only at second reading.

The Board of Health of the Haliburton, Kawartha, Pine Ridge District Health Unit urges you to support the repeal of Section 43 and to advocate for its swift passage, as demonstrated in the attached Resolution, which was carried at the Regular Board of Health Meeting of June 22, 2006.

Yours truly

BOARD OF HEALTH FOR THE HALIBURTON, KAWARTHA, PINE RIDGE  
DISTRICT HEALTH UNIT



A. Lynn Noseworthy, MD, MHSc, FRCPC  
Medical Officer of Health

- c.c. The Right Honourable Stephen Harper  
Rick Norlock, MP, Northumberland Quinte West  
Barry Devolin, MP, Haliburton Kawartha Lakes Brock  
Lou Rinaldi, MPP, Northumberland  
Laurie Scott, MPP, Victoria Haliburton Brock  
Member Municipalities  
✓ Ontario Health Units  
John Mackie, PVNC Catholic District School Board  
Sylvia Terpstra, KPR District School Board  
Kathy Verduyn, Trillium Lakelands District School Board  
Local Children's Agencies
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Repeal of Section 43 of the Criminal Code

Moved by Mrs. Godawa

Seconded by Mr. Austin

“WHEREAS, research indicates that physical punishment is still widely used and can have serious consequences for children; and

WHEREAS, Public Health Units are required under the Child Health Mandatory Health Program to implement strategies that will increase the percentage of children and youth who meet physical, cognitive, communicative and psychosocial developmental milestones and increase effective parenting ability in high-risk families; and

WHEREAS, Section 43 of the Criminal Code justifies the use of physical punishment of children between the ages of 2 and 12; and

WHEREAS, the Ontario Public Health Association (OPHA) is implementing an advocacy strategy for Repeal of Section 43; and

WHEREAS, calls for the repeal of Section 43 of the Criminal Code have been made repeatedly for almost 30 years;

THEREFORE BE IT RESOLVED that the Haliburton, Kawartha, Pine Ridge District Health Unit Board of Health support the repeal of Section 43 of the Criminal Code and write to the Minister of Justice indicating the Haliburton, Kawartha, Pine Ridge District Health Unit’s position and urging swift action on this matter;

BE IT FURTHER RESOLVED that copies of this resolution be sent to the Prime Minister, all local Members of Parliament, all local Members of Provincial Parliament, all Member Municipalities, all local Boards of Education, and all local organizations that work with children for support.”

Carried unanimously  
2006-80

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## **Legislative History of Efforts to Repeal Section 43 of the Criminal Code of Canada**

### **Liberal Government**

In 1977, the Standing Senate Committee on Health, Welfare and Science began a study on Childhood Experiences as Causes of Criminal Behaviour. In a chapter dealing with child abuse, the Committee noted that several psychiatrists appearing before it agreed that violent criminal behaviour is a direct result of abuse and neglect in the first 3 years of life. The Committee also noted the importance of building self-esteem at an early age and that repression of normal behaviour in early childhood through unreasonable discipline can contribute to delinquency.

After hearing 27 witnesses and receiving numerous briefs over an 18 month period, the Committee tabled its report *Child at Risk* in 1980 and made the following recommendation:

*We recommend that Section 43 of the Criminal Code of Canada entitled "Correction of Children by Force" and similar provisions in provincial and territorial legislation be reconsidered by Federal, Provincial and Territorial Governments in view of the sanction which this type of provision gives to the use of violence against children. (#26)*

In 1978, the Dept. of Justice produced a 54 page *Memorandum Concerning Section 43 of the Criminal Code*. It was a detailed analysis of Canadian and other laws on corporal punishment, with a commentary on their effects, and concluded that s. 43 should be ended. It recommended that it be made clear in the Code that force for correction is an assault.

The main reasons given for its conclusions were that physical discipline creates a risk of injuries, children should learn by example that force is unacceptable, and should have the same right to protection from assault as adults. In connection with this last reason, it referred to the UN declaration that 1979 would be the Year of the Child.

This memorandum was tabled at a 3-day federal-provincial conference on child abuse held in Ottawa in April 1978. According to a Toronto newspaper report, in addition to repealing s. 43, the government raised the possibility of creating a new charge of assault against children that would give legal recognition to the belief that assaults on defenceless children are "especially repugnant".

In May 1979, after the defeat of the Liberal government, a minority government under Joe Clark took power. In the following years, s. 43 ceased to be a priority until 1990 during the Progressive Conservative government of Brian Mulroney.

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### **Progressive Conservative Government**

Prime Minister Mulroney's Progressive Conservative (PC) government undertook a number of activities to promote the rights of children following Canada's signing of the United Nations Convention on the Rights of the Child in May 1990. These included the possibility of repealing s. 43 as part of Canada's response to the Convention.

**1990** World Summit on Children jointly initiated and co-chaired by Prime Minister Mulroney in September at the United Nations to encourage ratification of the Convention and draft a ten-year plan of action for children.

**1990** Children's Bureau established at Health Canada to ensure that the Convention was taken into account in government policies and to facilitate consultations among government, private and voluntary sectors.

**1991** Minister of Justice Kim Campbell instructed her department to undertake a study of s. 43 to see whether it conformed to the Convention.

**1993** Minister Kim Campbell recommended in June that s.43 be abolished with an eighteen-month delay in implementation to hold consultations and launch a public education campaign.

**1993** Children's Bureau sponsored a media strategy meeting on section 43 with NGOs in November.

**1994** Consultation on section 43 was held in January with NGOs and officials from departments of Health and Justice.

After the PC government was defeated in October 1993, the new Liberal government ended all action on repealing s. 43 and the Children's Bureau was disbanded.

### **Parliamentary Committees**

**1976** House of Commons Standing Committee on Health, Welfare and Social Affairs recommended "further consideration of section 43".

**1980** Senate Standing Committee on Health, Welfare and Science recommended section 43 "be reconsidered in view of the sanction which this type of provision gives to the use of violence against children".

**1981** House of Commons Standing Committee on Health, Welfare and Social Affairs responded to the report of the Canadian Commission for the International Year of the Child and recommended section 43 be "repealed immediately".

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### **Private Members Bills**

The following Private members Bills have been introduced in Parliament since 1994 to repeal s. 43. Because they have not been supported by the government, none have been referred to a parliamentary committee for study.

1994 Bill C-296 House of Commons, M.P. Svend Robinson

1996 Bill C-305 House of Commons, M.P. Svend Robinson

1996 Bill S-14 Senate, Senator Sharon Carstairs

1997 Bill C-276 House of Commons, M.P. Libby Davies

1998 Bill C-368 House of Commons, M.P. Tony Ianno

1999 Bill C-273, House of Commons, M.P. Libby Davies

2001 Bill C-329, House of Commons, M.P. Libby Davies

Due to the Liberal government's refusal to repeal section 43, the Canadian Foundation for Children, Youth and the Law filed an application in the Ontario Superior Court of Justice in November 1998 to have the section struck down. The basis of the application is that section 43 violates the Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child and is therefore unconstitutional. The application will be heard by the Supreme Court of Canada on June 6/03.

### **Supreme Court of Canada decision**

The Jan 30/04 decision of the Supreme Court of Canada on the constitutional challenge to section 43 was a split decision with 3 dissenting judgments. The majority held that lower courts must consider the section in light of the following criteria:

- a. correction is not the result of the caregiver's frustration, loss of temper or abusive personality;
- b. correction is not punitive and does not focus on the gravity of the child's wrongdoing;
- c. the child is not incapable of learning because of disability or some other contextual factor;
- d. force is not used against a child under 2 years or over 12 years of age;
- e. force does not involve the use of objects or slaps or blows to the head; or
- f. force does not cause bodily harm or raise a reasonable prospect of bodily harm and is of a minor, transitory and trifling nature.

Committee to Repeal Section 43 of the Criminal Code of Canada. [Political Response.](http://www.repeal43.org/political.html)  
[www.repeal43.org/political.html](http://www.repeal43.org/political.html)

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