

LEADERSHIP UPDATE

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The “Teachers’ Defence”: Section 43 in the Modern World

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As mentioned in part one in the previous issue, an increasing number of teachers are being criminally charged with assault in Alberta. Sometimes these allegations are exaggerated or maliciously brought by students or parents to advance a hidden agenda. In many of these cases, it is not disputed that the teacher had some physical contact with the child.

Not all physical contact by a teacher with a child is unjustified or criminal. Teachers charged with assault have the same defences available to them as anybody else, including self-defence, defence of others, etc. However, teachers and parents have an additional defence that is available only to them—section 43 of the *Criminal Code*¹ the so-called “parent and teacher defence.” It is the most important justification for a teacher’s application of force to a student. The question for the criminal court in most assault cases is whether or not s 43 applies to exonerate the teacher.

Physical contact of various types is common between teachers and students in modern schools. Teachers who wish to remain employed and stay out of the criminal justice system need to understand the difference between acceptable and unacceptable contact. It is important for teachers in the trenches to

understand how the offence of assault is defined and the limits of the s 43 defence.

The following is the second part of a two-part article in which I outline the principles relating to s 43 and what to do when faced with allegations of assault.

The Modern S 43

The Supreme Court held that s 43 was designed to balance the goals of providing children with a safe environment, free from abusive treatment, *and* to provide them with a stable family and school setting, where parents and teachers are not subject to the risk of criminal prosecution for minor and necessary physical contact.² The Court held that protecting children from abuse “is not the only need of children,” in that they “also depend on parents and teachers for guidance and discipline, to protect them from harm and to promote their healthy development within society.”³ In other words, children need discipline and correction, and minor physical contact can still play a legitimate role in that.

There are two overall requirements that must exist for the s 43 defence to protect a teacher:

1. the force in question must have been *by way of correction*, and
2. the force must have been *reasonable in the circumstances*.

The secret of getting ahead is getting started. The secret of getting started is breaking your complex overwhelming tasks into small manageable tasks, and then starting on the first one.

—Mark Twain

1. R.S.C. 1985, c. C-46

2. at ¶¶58-62

3. at ¶58



A. “By Way Of Correction”

There are two sub-elements of the “by way of correction” element:

1. the application of force must have been for the purpose of education, discipline or correction; *and*
2. the student must have been capable of benefiting from the correction in question.

The force applied must be to discipline or correct a child. Physical contact motivated by anger or frustration does not qualify. Some argue that the Supreme Court has held that whenever a parent or teacher physically corrects a child while angry, a s 43 defence is inapplicable. The better view is that the mere fact that a teacher is angry or frustrated while administering physical correction does not preclude the operation of s 43, as long as that is not the purpose behind the physical contact.⁴ A teacher or parent is not expected to be completely without emotion, immune from anger or frustration. As long as the force that is being applied is to direct or correct a child, the teacher will be exonerated if the teacher keeps his or her anger or frustration in check.

Even where the teacher applies physical force to correct a child, the “by way of correction” element will not exist if the child in question is not capable of benefiting from that

correction in the circumstances. If the student in question is intellectually challenged such that he or she does not have the capacity to learn from the correction in question (to the knowledge of the teacher), the defence will not apply.⁵

B. “Reasonable in the Circumstances”

Any physical application of force to a student must be proportionate. The teacher must not use excessive force in the circumstances. The Supreme Court held that “s 43 exempts from criminal sanction only *minor* corrective force of a transitory and trifling nature”⁶ [emphasis by the author].

The teacher is not required to make the *best* choice of options in disciplining or correcting a child, as long as the option selected is found to have been reasonable.⁷

It is critical for teachers to note that the courts distinguish between corporal punishment and other applications of corrective force. Force is characterized as corporal punishment if the application of force itself is the discipline administered to the student, ie, when the force is administered as a sanction.

The Supreme Court provided rules for determining whether or not corporal punishment is “reasonable” in any given situation.⁸ For example,

corporal punishment is always considered unreasonable for children under 2 or over 12 years of age, as it is harmful to them and has no corrective value. Use of objects, such as rulers or belts, would be considered unreasonable. Slaps or blows to the head are also prohibited.

However, the specific rules relating to corporal punishment are not important for teachers because teachers are no longer allowed to employ corporal punishment *at all*. The Court held that “contemporary social consensus is that while teachers might sometimes use corrective force to remove children from classrooms or secure compliance with instructions, the use of corporal punishment by teachers is no longer acceptable.”⁹ Corporal punishment remains an option available only to parents.

The Court expressly held that “teachers may sometimes use corrective force to remove children from classrooms or secure compliance with instructions”¹⁰ and that there will be “instances in which a parent or school teacher reasonably uses corrective force to restrain or remove an adolescent from a particular situation, falling short of corporal punishment.”¹¹ Teachers may take students by the hand or arm to remove them from a situation or direct them somewhere else, such as by taking them to the office for discipline.

4. see *Canadian Foundation for Children, Youth & Law v. Canada (Attorney General)* (2001) 161 C.C.C. (3rd) 178 (Ont.C.A.); *R. v. Swan* (2008) 58 C.R. (6th) 126 at ¶9; *R. v. Jonkman*, 2010 ABPC 245, at ¶¶39-40

5. *Ogg-Moss v. The Queen* [1984] 2 S.C.R. 173. See also *R. v. Burtis*, 2012 ABPC 12, in which a teacher who pinched a student’s ears while verbally admonishing him at some length was held not to be justified in that the autistic student in question was nonverbal and incapable of understanding such admonishment.

6. *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, at ¶¶40, 59

7. *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, at ¶36; *R. v. Burtis*, 2012 ABPC 12 at ¶¶62-64

8. *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, at ¶¶37-38, 40, 45-46

9. ¶38

10. at ¶38

11. at ¶46

In that case, the application of force is not, in and of itself, the sanction being visited upon the student. The student will receive the sanction in the office. Canadian courts have continued to recognize the distinction between corporal punishment and other forms of corrective force ever since.¹²

The question of whether or not the physical force used to direct or control a student is reasonable is to be determined by a court in an objective manner. The opinions of witnesses are not determinative.¹³ Although the Court can consider opinions by onlookers or

others (such as school administration) as to the appropriateness of the force used in the circumstances, those other opinions are not determinative.

What to Do When Faced with Allegations of Assault

If a teacher comes to learn that he or she is being accused of assault (or, indeed, any criminal offence), he or she should immediately contact Member Services of the Alberta Teachers' Association to obtain advice from an

experienced staff officer who will involve legal counsel if necessary. It is unwise to attempt to fix the situation yourself, especially when police are or may become involved. Teachers should avoid making statements about what did or did not happen without obtaining advice. ATA staff officers have a great deal of experience in dealing with these situations and have access to legal counsel. The staff officer and counsel will also be objective, in a situation where the teacher cannot be objective because he or she is "in the eye of the hurricane."

12. see *R. v. Swan* (2008) 58 C.R. (6th) 126 (Ont.S.C.) at ¶¶15, 18-21; *R. v. W.(B.W.)*, 2009 ABPC 145 at ¶¶16-17

13. *R. Mazur and Brooks*; unreported, 16 August 2011, Man.P.C.; *R. v. S.(S.)*, 2011 NBCA 75 at ¶¶43-44; *R. v. Burtis*, 2012 ABPC 12 at ¶61

Council for School Leadership

Distinguished Leadership Award Nominations

The Council for School Leadership is pleased to invite nominations from throughout Alberta for the CSL Alberta Distinguished Leadership Awards; 20 recipients will be honoured in May.

The CSL Distinguished Leadership Awards program creates a learning community of outstanding principals throughout Alberta who can share professionally, interact collegially and act as mentors to new colleagues. It provides avenues for research and sharing of best practices. The cadre of distinguished Alberta school leaders are



Council for School Leadership

people who want to challenge the status quo, improve learning in their contexts and be equipped for higher levels of leadership. These leaders will become role models in a vibrant network of educational leaders with the confidence and capabilities to lead innovative change for 21st-century learning—the Council for School Leadership.

Please consider nominating a deserving school leader for this honour.

There are two ways to nominate a school leader:

1. You can complete the PDF form found on bit.ly/CSLLeader and submit the finished form to our nomination committee by e-mail at leadershipfor21c@me.com
- or
2. You can go to bit.ly/CSLLeader and complete your nomination online.

The deadline for nominations is midnight, March 31, 2013. All nominees must be active members of the Council for School Leadership to be eligible to receive the award.

To find archived issues of *Leadership Update*, go to www.teachers.ab.ca and click on Other Publications (under Publications), then go to School Administrators.

Feedback is welcome. Please contact Konni deGoeij, associate coordinator, administrator assistance, Member Services, at konni.degoeij@ata.ab.ca.

CAP 2013—Call for Proposals

Something new and exciting is happening this year! The Canadian Association of Principals conference, CAP 2013—“The Summit of Educational Leadership,” will take place in April at the beautiful Banff Springs Hotel.

We are searching for innovative and creative school and jurisdictional leaders to share their leadership stories at the Canadian Association of Principals conference, to be held in Banff in April 2013. A very special part of the CAP 2013 conference will be an “Innovative School and District Leaders” panel that will be one of the keynote presentations at the conference. Innovative school and district leaders from across the world have been carefully selected to be a part of this panel and share their stories with delegates.

- Jannie Jeppesen, *rektor* of Vittra Telefonplan School, Stockholm, Sweden
- Ante Runquist, head of research and development of Vittra Telefonplan School, Stockholm, Sweden
- Anne van Zyl, head of the Oprah Winfrey Leadership Academy for Girls, Johannesburg, South Africa

- Sue Walsh, director of system learning, Parramatta Schools, Sydney, Australia
- Richard Gerver, recipient of Britain’s School Head of the Year Award and colleague of Sir Ken Robinson

We would like to add several of Alberta’s most innovative and creative school and division leaders to the panel, which will take place on April 23, 2013, in Banff.

To submit your proposal to share at CAP 2013 in either a concurrent session or as one of the school or district leaders who will represent Alberta on the prestigious innovative school and district leaders panel, please go to <http://bit.ly/UIU7og> and share your district or school’s leadership story. [Note: Prospective presenters can be either school-based or district-based leaders.]

Background information about the upcoming CAP 2013 conference can also be found at <http://bit.ly/UIU7og>.

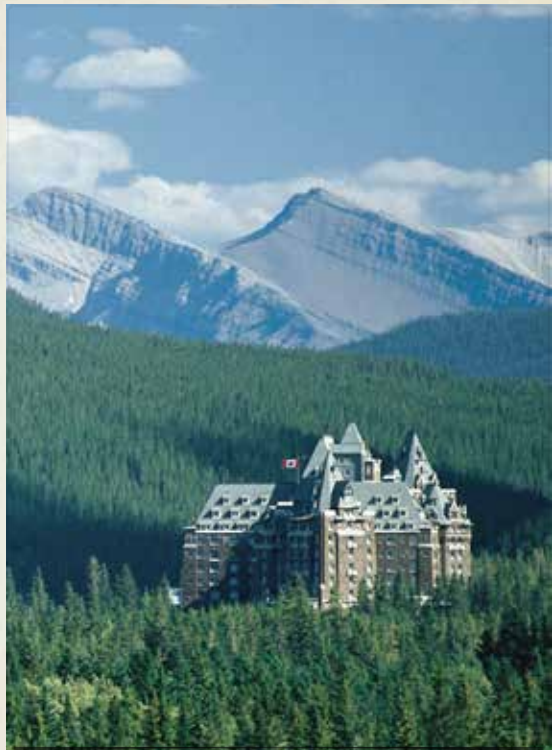
*Jeff Johnson, Director
CAP 2013 & ULead 2012*

CAP 2013

A unique opportunity awaits for you to join educational leaders from around the world in the beautiful world heritage location of Banff, Alberta. Hundreds of leaders from across Canada and beyond have already registered to attend Canada’s premier conference for educational leaders.

The Canadian Association of Principals Conference is set in Alberta just once every ten years. CAP 2013 offers a rare and historic dialogue with the world’s leaders in education in a setting that has been called “the jewel of the Rockies.” A wide array of world-class keynote speakers will animate the dialogue of those attending. Join us in April!

www.cap2013.ca



Healthy Interactions for Facilitators

March 5–8, 2013, Calgary

Registration deadline: February 22

Practical communication strategies are helpful for all educators at all levels of school organization. Participants will be given an overview of communication and problem-solving skills that can assist in handling concerns when they arise. This workshop is intended to help educators understand how to deal with concerns in a consistent, comprehensive and credible way that is interest-based and fair to everyone. Information will also be provided on how Healthy Interactions, when implemented throughout a school or district, can benefit all stakeholder groups. For information and registration forms visit www.teachers.ab.ca and follow the links under For Members and then Healthy Interactions Program.

Leadership Exchange Opportunity to Australia

Experience an Education System in South Australia

What is the purpose of a short-term leadership exchange? Visiting another education system is an effective and enjoyable way to reflect upon and enhance our leadership practice.

This professional development experience promotes

- sharing of best practices across cultures,
- creating partnerships between classrooms and schools, and
- promoting deeper global understanding through visiting and then hosting your counterpart on the return visit.

This is a two-week job-shadow opportunity. Please visit www.ieep.ca for dates, further information and application forms, or e-mail the coordinator, Carolyn Freed, at teacher.exchange@ieep.ca.

Deadlines to participate in 2013/14 are fast approaching, so don't delay!



Invitation for Leaders' Input: Creating Caring, Respectful and Safe Learning Environments

Francesca Roznicki

The Society for Safe and Caring Schools & Communities (SACSC), in partnership with the Alberta Teachers' Association and Alberta Education, is developing a guidebook outlining a comprehensive approach for creating a caring, respectful and safe school. The new Alberta *Education Act* (Bill 3) outlines responsibilities for boards, students and parents to provide welcoming, caring, respectful and safe learning environments, free from bullying.

SACSC conducted a literature review on evidence-based strategies in 2012. Peer-reviewed articles were researched in a Canadian context, which included empirical and theoretical literature written over the past 10 years.

The following nine themes that help build a caring, respectful and safe school were identified in the literature review. These components are found to be most effective when a school intentionally dedicates time and planning to ensure sustainability.

- 1. Positive relationships**—all relationships are built on trust, respect and open communication.
- 2. Safety**—school buildings are safe havens for students, and students are protected from harm from school pupils and outsiders.
- 3. Positive school culture**—a school community that is connected and

fosters positive attitudes is developed.

- 4. Social–emotional development**—programs are implemented and supported to teach students social–emotional skills and give them opportunities to practise using them with others.
- 5. Restorative practices**—a set of values and a process that views inappropriate behaviour as a violation of relationships, not rules, are implemented.
- 6. Cognitive growth**—realistic expectations are set and structures are in place to help students reach the highest academic potential and growth.
- 7. Shared vision**—all members are clear about what their role is, and there is consistent effort to maintain a caring, respectful and safe school.
- 8. Community engagement**—students and staff build relationships and partnerships with members and organizations from the community.
- 9. Leadership**—staff is supported and guided by school administration and the school district to implement caring, respectful and safe schools.

We are looking for administrators and schools to be part of the data collection process. As administrative leaders in your district and/or in your school, we know you successfully implement many creative and safe

practices in your schools. To provide the guidebook with an Alberta context, we invite you to share the practices and approaches that you are currently using to create caring, respectful and safe schools, and we invite your students to share their own experiences.

To thank you, all participants will be entered into a draw for a free violence-prevention presentation from SACSC to their school staff. Data collected from these surveys will help inform the guidebook, which will be distributed to schools across Alberta. Please go to the appropriate link below to complete the 5- to 15-minute survey:

- Administrator Survey: www.surveymonkey.com/s/CRSAdmSurvey
- Student Surveys (Grades 2 and 5): www.surveymonkey.com/s/CRSElementSurvey
- Student Surveys (Grades 8 and 11): www.surveymonkey.com/s/CRSSecondSurvey

If you wish to participate in a focus group discussion, or for more information on this project, please contact SACSC executive director Donna Blundell at 780-822-1500.

To access our free resources including information booklets, tip sheets and lesson plans, check out our newly redesigned website at www.sacsc.ca.

Francesca Roznicki is SACSC's communications officer.



Q & A
GORDON THOMAS
 Executive Secretary

Teachers' Convention

Q: I have had a few requests from teachers regarding their attendance at teachers' convention. Some of these questions are, What do they do if they are sick? Who approves alternate professional development activities? What do they do if they are part-time? Can I bring my teacher assistant to convention? I have a sporting event scheduled during convention; can I leave early? What if I want to take a personal day?

A: The *School Act* designates two days of teachers' conventions authorized by the ATA as teaching days for the purposes of salary and benefits. ATA Bylaws under the *Teaching Profession Act* specify that "unless otherwise approved by a convention association, all active members shall attend" their assigned convention.

Here are some helpful points:

- Attendance at convention is required teacher work.
- Administrators cannot direct or give permission for a teacher to work at the school or at home during convention.
- Collective agreements can contain clauses that provide leave from work such as sick leave provisions, compassionate leave or other leaves of absence. Administrators cannot change the procedures normally used under the collective agreement. The collective agreement must be followed.
- Administrators cannot direct or approve an alternate professional development activity during convention. Only the convention attendance committee of your assigned convention association has that authority. Have the teacher check the website to find out who to contact, what the deadlines are and the criteria for alternate PD.
- The requirement for part-time teachers is that they attend work the same as they normally would during convention. If a 0.5 FTE teacher's schedule is all day Monday, all day Tuesday and Wednesday afternoon, that teacher would not be obligated to attend convention on Thursday or Friday. Conversely, if the teacher's 0.5 FTE schedule was every morning, the teacher would be expected to attend both mornings at convention. There is nothing that would preclude the teacher from rearranging his or her time (eg, attending a full day) to facilitate attendance at sessions of particular interest to that teacher. If the teacher's 0.5 schedule was Wednesday morning and all day Thursday and Friday, the teacher would be expected to attend all of convention.
- Administrators cannot give permission for or require teaching assistants or educational assistants to attend teachers' convention because they are not certificated teachers who are members of the ATA and have paid their ATA dues including their convention fee.
- Student teachers can attend convention only if they are from a program recognized by the Association; they are members of their student local or, in the absence of a student local, student members of the Association; and they are in their senior practicum at time of convention. The distribution of lanyards, which include information that would identify someone as a student teacher, is coordinated at a provincial level through the institutions and their student locals.
- Administrators cannot schedule or approve any school trips that would occur during convention time because convention attendance committees will not give permission for such trips as they do not qualify as professional development. The exception to this is Alberta School Athletic Association provincial finals. Have your teachers check the website for the form for teacher coaches to be absent from convention to travel with their team to provincials on the Friday afternoon of their convention.

For more information, check the ATA website under Professional Development/ Teachers' Conventions/ Frequently Asked Questions.

For specific questions about the collective agreement, call Teacher Welfare staff at 1-800-232-7208.

