

# Corporal punishment of children in Canada

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Child population 6,961,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal  
Punishment of Children**

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, some alternative care settings, day care and some schools.

Section 43 of the Criminal Code allows for the use of force “by way of correction”. This provision should be repealed and prohibition enacted of all corporal punishment and other cruel or degrading forms of punishment in childrearing and education.

*Alternative care settings* – Prohibition of corporal punishment should be enacted in relation to foster care in New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon; in state provided care in Ontario, Quebec, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon.

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc) in Quebec.

*Schools* – Prohibition of corporal punishment should be enacted in legislation applicable to all schools, public and private, in all provinces and territories. This is still to be achieved in private schools in British Columbia, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan, Yukon and Ontario, and in relation to all schools in Alberta and Manitoba.

## Current legality of corporal punishment

### Home

Corporal punishment is lawful in the home. Section 43 of the Criminal Code 1985 (“Protection of Persons in Authority”) states: “Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.” A Supreme Court ruling on 30 January 2004 stated that this section justifies only “minor corrective force of a transitory and trifling nature” and that it rules out corporal punishment of children under the age of two years or over the age of 12 years, as well as degrading, inhuman or harmful conduct, discipline using objects such as rulers or belts and blows or slaps to the head.<sup>1</sup>

In **Quebec**, the right to use “reasonable and moderate correction” on children was confirmed in the Civil Code 1866 (art. 245); the Civil Code 1977 stated that “the person having parental authority has a right to correct the child with moderation and within reason” (art. 245b). This article was repealed in 1980, but section 43 of the federal Criminal Code applies nevertheless.

In 2015, the report of the Truth and Reconciliation Commission of Canada, which aims to redress the legacy of residential schools and advance the process of Canadian reconciliation, calls on the Government of Canada “to repeal Section 43 of the Criminal Code of Canada”.<sup>2</sup> The summary report of the Commission states: “Although it is employed much less frequently now, corporal punishment is still legally permissible in schools and elsewhere under Canadian law.... The Commission believes that corporal punishment is a relic of a discredited past and has no place in Canadian schools or homes.”<sup>3</sup> In 2016, the Government stated that section 43 “provides a limited defence for parents who use minor corrective force toward a child under their care, if that force does not exceed what is reasonable under the circumstances” and added that without this defence, “parents who carry a child to their bedroom for a “time-out” could risk being convicted of assault”.<sup>4</sup>

Numerous bills which would repeal section 43 of the Criminal Code have been introduced but failed to progress through Parliament. The latest, a private member’s bill to repeal section 43 of the federal Criminal Code (Bill S-206) passed second reading in the Senate in 2018 but did not progress further before prorogation of Parliament in 2019. Canada became a Pathfinder country with the Global Partnership to End Violence Against Children in February 2018. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. Despite this commitment, the Government noted recommendations to enact an explicit prohibition brought forward during the Universal Periodic Review in 2018.<sup>5</sup>

### Alternative care settings

Corporal punishment is prohibited in foster care in **Alberta, British Columbia, Manitoba, Ontario and Quebec**. There is no explicit prohibition in foster care in **New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon**. Corporal punishment is prohibited in state provided care in **Alberta, British Columbia, Manitoba and Yukon**. In

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<sup>1</sup> *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, file no. 29113

<sup>2</sup> Truth and Reconciliation Commission of Canada (2015), *Truth and Reconciliation Commission of Canada: Calls to Action*, Call to Action No. 6

<sup>3</sup> Truth and Reconciliation Commission of Canada (2015), *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, page 144

<sup>4</sup> 13 September 2016, CAT/C/CAN/7, Seventh report, para. 213

<sup>5</sup> 18 September 2018, A/HRC/39/11/Add.1 Advance unedited version, Report of the Working Group: Addendum, para. 21

**Ontario**, it is prohibited in provincially-licensed childcare programmes and foster homes, and for all children receiving services from a child protection agency or other service provider licensed or approved by the province.

### **Day care**

Corporal punishment is prohibited in child care in all provinces and territories except **Quebec**.

### **Schools**

The 2004 Supreme Court judgement (see under “Home”) stated that teachers may not use corporal punishment, although they may use reasonable force to remove a child from a classroom or to secure compliance with instructions. This prohibition is not reflected in the laws of all provinces and territories. Corporal punishment is prohibited by law in state schools in **British Columbia** (School Act 1973), **New Brunswick** (Schools Act 1990), **Newfoundland** (Schools Act 1997), **Northwest Territories** (Northwest Territories and Nunavut Education Act 1995), **Nova Scotia** (Education Act 1989), **Nunavut** (Northwest Territories and Nunavut Education Act 1995), **Prince Edward Island** (School Act 1993), **Quebec** (Education Act 1997), **Saskatchewan** (Education Act 2005), **Yukon** (Education Act 1990) and **Ontario** (Education Act 2009). There is no legal prohibition in **Alberta** and **Manitoba**, though policy in many school boards states that corporal punishment should not be used.

### **Penal institutions**

Corporal punishment is unlawful as a disciplinary measure in penal institutions. We have no details of applicable law but in Quebec and presumably other provinces/territories prohibition is not explicit.

### **Sentence for crime**

Corporal punishment is unlawful as a sentence for crime under the Criminal Code. The relevant provisions were repealed in 1972.

## **Universal Periodic Review of Canada’s human rights record**

Canada was examined in the first cycle of the Universal Periodic Review in 2009 (session 4). No specific recommendation was made during the review concerning corporal punishment of children but the Government accepted the following recommendation:<sup>6</sup>

“Implement in national legislation the prohibition and criminalization of all types of violence against women and children, specially [sic] indigenous women and children, in accordance with the commitments acquired in the corresponding Conventions (Bolivia)”

In remarks on this recommendation made at a later state, Sweden encouraged Canada to include prohibition of corporal punishment.<sup>7</sup>

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<sup>6</sup> 5 October 2009, A/HRC/11/17, Report of the Working Group, para. 86(34)

<sup>7</sup> 16 October 2009, A/HRC/11/37, Report of the Eleventh session of the Human Rights Council, para. 256

Review in the second cycle took place in 2013 (session 16). The following recommendation was made:<sup>8</sup>

“Explicitly criminalize corporal punishment of children (Iceland)”

The Government rejected the recommendation, stating: “The Criminal Code criminalizes all child abuse, but provides a limited defence to parents, caregivers and teachers, in cases only where minor corrective force of a transitory or trifling nature is used.”<sup>9</sup>

Third cycle examination took place in 2018 (session 30). The following recommendations were extended:<sup>10</sup>

“Explicitly prohibit corporal punishment of children in all settings, including at home (Montenegro)”

“Enact and implement Bill S-206 as soon as possible (Sweden)”

The Government noted the recommendations, stating that “abusive conduct against children is prohibited under Canada’s Criminal Code, and any conduct that places a child in need of protection is also subject to intervention under [provincial and territorial] child protection laws”.<sup>11</sup>

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(6 December 2012, CRC/C/CAN/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 44 and 45)

“While welcoming the State party’s efforts to implement the Committee’s concluding observations of 2003 on the State party’s initial report (CRC/C/15/Add.215, 2003), the Committee notes with regret that some of the recommendations contained therein have not been fully addressed.

“The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the second periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to ... corporal punishment....

“The Committee is gravely concerned that corporal punishment is condoned by law in the State party under Section 43 of the Criminal Code. Furthermore, the Committee notes with regret that the 2004 Supreme Court decision *Canadian Foundation for Children, Youth and the Law v. Canada*, while stipulating that corporal punishment is only justified in cases of “minor corrective force of a transitory and trifling nature,” upheld the law. Furthermore, the Committee is concerned that the legalization of corporal punishment can lead to other forms of violence.

“The Committee urges the State party 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, however light, within the family, in schools and in other institutions where children may be placed. Additionally, the Committee recommends that the State party:

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<sup>8</sup> 28 June 2013, A/HRC/24/11, Report of the working group, para. 129(118)

<sup>9</sup> 17 September 2013, A/HRC/24/11/Add.1, Report of the working group: Addendum, para. 24

<sup>10</sup> 11 July 2018, A/HRC/39/11, Report of the Working Group, paras. 142(213) and 142(214)

<sup>11</sup> 18 September 2018, A/HRC/39/11/Add.1 Advance unedited version, Report of the Working Group: Addendum, para. 21

- a) strengthen and expand awareness-raising for parents, the public, children, and professionals on alternative forms of discipline and promote respect for children's rights, with the involvement of children, while raising awareness about the adverse consequences of corporal punishment;
- b) ensure the training of all professionals working with children, including judges, law enforcement, health, social and child welfare, and education professionals to promptly identify, address and report all cases of violence against children."

### ***Committee on the Rights of the Child***

(27 October 2003, CRC/C/15/Add.215, Concluding observations on second report, paras. 4, 5, 32, 33 and 45)

"The Committee, while noting the implementation of some of the recommendations (CRC/C/15/Add.37 of 20 June 1995) it made upon consideration of the State party's initial report (CRC/C/1/Add.3), regrets that the rest have not been, or have been insufficiently, addressed, particularly those contained in: ... paragraph 25, suggesting a review of penal legislation that allows corporal punishment.

"The Committee urges the State party to make every effort to address those recommendations contained in the concluding observations on the initial report that have not yet been implemented....

"The Committee welcomes the efforts being made by the State party to discourage corporal punishment by promoting research on alternatives to corporal punishment of children, supporting studies on the incidence of abuse, promoting healthy parenting and improving understanding about child abuse and its consequences. However, the Committee is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment.

"The Committee recommends that the State party adopt legislation to remove the existing authorization of the use of 'reasonable force' in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed.

"The Committee recommends that the State party further improve the quality of education throughout the State party in order to achieve the goals of article 29, paragraph 1, of the Convention and the Committee's general comment No.1 on the aims of education by, inter alia:

- d) adopting appropriate legislative measures to forbid the use of any form of corporal punishment in schools and encouraging child participation in discussions about disciplinary measures."

### ***Committee on the Rights of the Child***

(20 June 1995, CRC/C/15/Add.37, Concluding observations on initial report, paras. 14 and 25)

"Further measures seem to be needed to effectively prevent and combat all forms of corporal punishment and ill-treatment of children in schools or in institutions where children may be placed. The Committee is also preoccupied by the existence of child abuse and violence within the family and the insufficient protection afforded by the existing legislation in that regard.

"The Committee suggests that the State party examine the possibility of reviewing the penal legislation allowing corporal punishment of children by parents, in schools and in institutions where children may be placed. In this regard and in the light of the provisions set out in articles 3 and 19 of the Convention, the Committee recommends that the physical punishment of children in families be

prohibited. In connection with the child's right to physical integrity as recognized by the Convention, namely its articles 19, 28 and 37, and in the light of the best interests of the child, the Committee further suggests that the State party consider the possibility of introducing new legislation and follow-up mechanisms to prevent violence within the family, and that educational campaigns be launched with a view to changing attitudes in society on the use of physical punishment in the family and fostering the acceptance of its legal prohibition."

## **Prevalence/attitudinal research in the last ten years**

In a 2013 survey of 500 parents and other main caregivers of 0-6 year olds living in Ontario, 25% of respondents spanked or slapped their child at least once a week. Parents who used corporal punishments belonged to all socio-economic groups. Parents aged 35-44 were more likely to use corporal punishment than younger parents. Parents with only high school or less education were less likely to use corporal punishment than parents with a higher level of education, and parents with a low income were less likely to use corporal punishment than parents with a higher income. A quarter (26%) of respondents agreed that "slapping/spanking are effective methods to educate a child"; 72% disagreed. Fifty-five per cent agreed that "slapping/spanking teaches children it is acceptable to hit others". Sixty-one per cent of respondents wrongly believed that Canada's law prohibits parents from physically punishing children of any age.

(Best Start Resource Centre (2014), *Child Discipline: Ontario Parents' Knowledge, Beliefs and Behaviours*, Toronto: Best Start Resource Centre)

A 2012 survey of 4,029 mothers and 1,342 fathers of children under 17 in Quebec found that although the use of corporal punishment had declined since similar surveys in 1999 and 2004, 35% of children experienced physical punishment such as slaps with bare hands on the buttocks, hand, arm or leg at least once a year and 11% three times or more in a year; 49% experienced psychological aggression, such as being shouted or screamed at, called names or threatened, three or more times a year. Ten per cent of mothers and 15% of fathers thought it was acceptable to slap a disobedient child.

(Clément, M. E. et al (2013), *La violence familiale dans la vie des enfants du Québec, 2012 : Les attitudes parentales et les pratiques familiales*, Montréal: Institut de la statistique du Québec)

In a survey of 818 adults without children, mostly aged 18-21, 46% agreed that section 43 of Canada's Criminal Code, which allows for the use of "reasonable force" to "correct" children, "should be ended if guidelines are developed so that parents are not prosecuted for mild slaps or spankings"; 26% disagreed. "Favourable attitudes" towards "spanking" were held by 17%.

(Bell, T. & Romano, E. (2012), "Opinions About Child Corporal Punishment and Influencing Factors", *Journal of Interpersonal Violence*, 27(11), 2208-2229)

The Canadian Incidence Study of Reported Child Abuse and Neglect 2008, the third nationwide study to examine the incidence of reported child maltreatment, involved 112 child welfare service agencies in Canada, reporting on 15,980 child protection investigations. The study found that nearly three quarters (74%) of all cases of "substantiated physical abuse" were cases of physical punishment and 27% of "substantiated emotional maltreatment incidents" were initiated as a form of punishment. In the vast majority (17,212) of the estimated 18,688 cases of "substantiated physical abuse", physical violence was the primary form of maltreatment. Of cases of physical violence, 54% involved children being slapped or "spanked", 30% being shaken, pushed, grabbed or thrown, 21% being hit with objects and 8% being punched, kicked or bitten.

(Jud, A. & Trocmé, N. (2013), *Physical Abuse and Physical Punishment in Canada*, Child Canadian Welfare Research Portal Information Sheet # 122)

A study involving questionnaires with 712 medical students (74% female) at Laval University in Québec between 2006 and 2011 found that 22% (31% of male students, 18% female) were in favour of corporal punishment of children. Of students who had experienced corporal punishment as children, 36% were in favour of it, compared to 4% of students who had not experienced corporal punishment as children.

(Labbé, J. et al (2012), "The opinion of Québec medical students on corporal punishment", *Paediatric Child Health* 17(9), 490-494)

In a Leger Marketing survey of 1,000 adult men in Alberta, undertaken during February 2012, 21% said slapping a child's face is acceptable behaviour; one in ten said hitting a woman is acceptable if she makes them angry.

(Reported in *Toronto Star*, 15 March 2012, as reported at [www.repeal43.org](http://www.repeal43.org))

In an online poll of more than 6,000 people, 54.6% said "spanking" should not be allowed under Canadian law; 35% said spanking should be allowed and the limits set out by the Supreme Court in 2004 were "reasonable", and 8.5% said spanking should be allowed and the limits set by the Supreme Court were "too strict".

(Reported in *CBC News*, 6 February 2012, [www.cbc.ca](http://www.cbc.ca))

A 2008 interview study in Canada with adolescents and their parents of Caribbean and of Filipino heritage found that 78% of the 118 Caribbean parents and 42% of the 136 Filipino parents thought they should have the "right" to physically punish their children, while adolescents disagreed.

(Hassan, G. et al (2008), "Caribbean and Filipino adolescents' and parents' perceptions of parental authority, physical punishment, and cultural values and their relation to migratory characteristics", *Canadian Ethnic Studies*, 40(2), 171-186)