

Canada_NGO_Global Initiative to End All Corporal Punishment of Children_PSWG

BRIEFING ON CANADA FOR THE COMMITTEE ON THE RIGHTS OF THE CHILD, SESSION 87
PRE-SESSIONAL WORKING GROUP – June 2020

From the Global Initiative to End All Corporal Punishment of Children, February 2020

1 The report of Canada to the Committee on the Rights of the Child

In reply to the Committee's previous recommendations on corporal punishment, Canada's fifth/sixth state party report states that the federal Criminal Code and the province/territory level Child Protection Acts provide children with protection from violence. The report also acknowledges that section 43 of the federal Criminal Code provides a defence for parents and persons standing in the place of parents to use "reasonable force" against children, including for disciplining purposes.

The Government of Canada has given no indications of supporting law reform to prohibit all corporal punishment of children – a Bill to do so by repealing the defence (Bill S-206), which was first introduced in December 2015, failed when Parliament was prorogued in 2019. Canada committed to ending all forms of violence against children when it became a Pathfinder country with the Global Partnership to End Violence Against Children in February 2018. The state has an obligation under human rights law to enact legislation which protects children from all forms of violence, including all corporal punishment.

2 The legality and practice of corporal punishment of children in Canada

2.1 Summary: Corporal punishment of children is unlawful in schools and in the penal system in Canada. It is still lawful in homes and in alternative care and day care settings in some provinces/territories.

2.2 Home (lawful): 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.

2.3 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.

2.4 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". 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." 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".

2.5 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.

2.6 Alternative care settings (partially lawful): 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 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.

2.7 Day care settings (partially lawful): Corporal punishment is prohibited in child care in all provinces and territories except Quebec.

2.8 Schools (unlawful): The 2004 Supreme Court judgement 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.

2.9 Penal institutions (unlawful): 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.

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

3 Recommendations by human rights treaty bodies and during the UPR

3.1 CRC: The Committee on the Rights of the Child has three times expressed concern at corporal punishment of children in Canada and recommended it be explicitly prohibited in the home – in its concluding observations on the state party's initial report in 1995, on the second report in 2003 and on the third/fourth report in 2012.

3.2 UPR: During the Universal Periodic Review of Canada in 2013, the Government rejected the recommendation to criminalise corporal punishment of children, defending the legal provision of a defence "in cases where minor corrective force of a transitory or trifling nature is used". The Government noted recommendations to enact an explicit prohibition of corporal punishment in 2018, stating that "abusive conduct against children is prohibited under Canada's Criminal Code".

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children

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