

Canada_NGO_Violence Against Children Lobby Group, Justice for Canadian Children_PSWG

INTRODUCTION

This NGO alternative report for the CRC treaty, focuses on specific key elements of only one cluster group:

Violence against children:

Abuse and neglect, including physical and psychological recovery and social reintegration (arts. 19 and 39)

Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (arts. 37(a) and 28(2))

The situational analysis is formatted in a way that emphasizes Canada's commitment to ending violence against children even with the obstacles faced. A brief background of global efforts and facts of child violence precede a summary outline of some of Canada's more notable efforts to date (including Canada's recent pledge to become a Pathfinder Country for the Global Partnership to End Violence Against Children). This is done to illustrate Canada's alignment with international efforts to end child violence (Public Health Agency of Canada, 2019; Global Partnership, 2016).

Canada has passion towards ending violence against children but has reached a very serious roadblock at Section 43 (Corporal Punishment) in the Canadian Criminal Code (Criminal Code, 1985).

Parliamentarian efforts have been ongoing since before the CRC's initial report for Canada and the numbers in support of 43 repeal continue to rise (LEGISinfo, 2019; Perron et al.).

Despite this, the majority of Canadian's views towards spanking is holding Canada back (Angus Reid Group, Globe and Mail, CTV, 1999).

The analysis continues to explore, in detail, the innerworkings of the problem and purposes a simplified step-by-step plan on how we can navigate past them – with immediate change in how we protect our children, and keeping on schedule with the 2030 Sustainable Development Goal 16.2 – to end all forms of violence against children and the Pathfinder Country promise to accelerate our actions by 2021-2023 (United Nations, 2019; Global Partnership, 2016; PHAC 2019).

NGOs:

Violence Against Children (VAC) Lobby Group, a small not-for-profit that has formed for the sole purpose of lobbying the Canadian Parliament for child violence law reform (VAC Lobby Group, 2020).

Justice for Canadian Children, a not-for-profit created alongside VAC to facilitate efforts in preventing child violence, mainly through awareness (J4CC, 2020).

THE UN WANTS TO END VIOLENCE AGAINST CHILDREN (FACTS)

In 1989 the United Nations adopted a human rights treaty for children, named the United Nations Convention on the Rights of the Child (UNCRC). Several of its articles relate to violence against children, including; Article 3 (Best Interest of the Child), Article 19 (Protection from Violence, Abuse and Neglect), Article 24 (Health and Health Services), Article 28 (Right to Education), Article 34 (Sexual Exploitation), Article 37 (Inhumane Treatment and Detention) and Article 39 (Recovery from Trauma and Reintegration). 3, 19, 24, 28, 34, 37 and 39

In 2015 all United Nations Member States adopted the 2030 Agenda for Sustainable Development – a global plan for peace and prosperity. There are 17 Sustainable Development Goals (SDGs) which are specific objectives for each country to attain. SDG Goal 16 (to promote peace, justice and strong institutions) has a specific target (16.2) to end all forms of violence against children – by the year 2030.

In 2016 the Global Partnership to End Violence Against Children launched as a collaboration of several United Nations agencies, governments and other groups/organizations (both public and private) – with the shared goal of a global strategy to prevent violence against children. The World Health Organization (WHO) initiated the development of a technical guide for combating violence against children, including 7 key strategies titled 'INSPIRE'. (I-Implementation and Enforcement of Laws, N-Norms and Values, S-Safe Environments, P-Parent and Caregiver Support, I-Income and Economic Strengthening, R-Response and Support Services, E-Education and Life Skills).

The information regarding the effects of child violence continues to grow, citing “The immediate and long-term public health consequences and economic costs of violence against children undermine investments in education, health, and child well-being, and erode the productive capacity of future generations.” “Exposure to violence at an early age can impair brain development and damage other parts of the nervous system, as well as the endocrine, circulatory, musculoskeletal, reproductive, respiratory and immune systems, with lifelong consequences” from the World Health Organization (WHO, 2016). Other sources detail DNA molecule damage (due to erosion of telomeres) (Shalev et al, 2013) and negative impressions on epigenetic processes (Weinhold, 2006). These can both lead to things such as mood disorders, psychosocial stress, schizophrenia, smoking, obesity, premature aging (as much as 7-10 years) and even lower life expectancy (under certain circumstances up to two decades) – for both the child and their future offspring for many generations (Moffit, 2012; Weinhold, 2006; Brown, 2009). Victims of child violence are also statistically proven to have lower IQ scores, higher rates of criminal behaviour (74% more likely), and higher rates of suicide (6x more likely) (Child Domestic Violence Association, 2016).

CANADA WANTS TO END VIOLENCE AGAINST CHILDREN (FACTS)

In 1990 Canada signed the UNCRC before ratifying in 1991. In 2018 Canada became a Pathfinding Country for the Global Partnership to End Violence Against Children, agreeing to accelerate its actions within 3-5 years. The Public Health Agency of Canada released 'Canada's Road Map to End Violence Against Children', stating that “Canada takes its international human rights obligations very seriously” and “Canada is fully committed to taking all appropriate measures to protect from violence” (Public Health Agency, 2019).

Canada has taken many steps towards trying to end violence against children, including the ratification of the 'Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography', national surveillance programs such as the 'Canadian Incidence Study of Reported Abuse and Neglect' (CIS) and amendments to the Canadian Criminal Code. In 1996 Canada added a sentencing principle to consider abuse committed by a person of authority or trust (Section 718.2(a)(iii)). In 2005 another sentencing principle for abuse to a person under the age of eighteen (Section 718.2(a)(ii.1)) was added. The preamble from Bill C-2 (which became Section 718.2(a)(ii.1) specifically cites the UNCRC as one of the reasonings for the amendment (Criminal Code, 1985; Parliament of Canada, 2005). The UN Committee on the Rights of the Child (CRC) has commended Canada on many of these things through the 2nd and 3rd/4th reports (UNCRC 2003; 2012).

In 2019 Canada held a national workshop to facilitate civil society discussion and input on 'Ending Violence Against Children as a Pathfinding Country'. It was co-hosted by UNICEF Canada, the Canadian Coalition for the Rights of Children (CCRC) and PrevNet with the support of the Public Health Agency of Canada.

The effects of child violence in Canada are no less and, in some areas, greater than those accounted for globally. The public health agency cites; “Negative impacts on child development, poor mental health, physical health impacts, behaviours that put health at risk, economic and social outcomes, increased risk of violence in future

relationships, death and severe injury” (Public Health Agency, 2019). Cost studies reveal an estimated just under \$16 billion dollars – in 2003 (McKenna et al., 2003).

ALL SIGNS POINT TO SECTION 43 (THE NEXT STEP)

Section 43 of the Canadian Criminal Code is the justification of “Correction of Child by Force”. It was put in place to protect parents, caregivers and schoolteachers from subject to a criminal charge when they administer physical discipline to their children (Criminal Code, 1985). The United Nations has been asking for its review and subsequent repeal since at least 1994 (UNCRC, 1994).

All the Committee Reports to Canada (including the initial report) have made mention of Section 43. The 1st report in 1994 talked about a review of Section 43 and whether it complied with the Convention. The 2nd report in 2003 confirms that physical punishment of children should be prohibited and recommends the repeal of Section 43. The combined 3rd-4th report in 2012 declares that it is gravely concerned about Section 43 and urges Canada to take action. (UNCRC 1994; UNCRC, 2003; UNCRC, 2012).

The Pathfinder workshop also mentions the repeal of Section 43 numerous times in it's various list of ideations as it corresponds with most of the strategies listed in INSPIRE (Global Partnership to End Violence Against Children, 2016).

7 RAMIFICATIONS OF CRIMINAL CODE AMENDMENT ON CHILD RIGHTS

MESSAGE

National leadership via law amendment at the federal level sends a clear message that ending violence against children is a high priority, demonstrating that violent behavior against children is not acceptable. Implementing Article 19 into criminal law would help end the perception that some forms of violence against children are legitimate.

BEST INTERESTS OF THE CHILD (BIOC)

Best Interests of the Child is Article 3 of the UNCRC (UNCRC, 2012). In 2003, Canada was asked to integrate this principle into all its laws (UNCRC, 2003). The inclusion and consideration of all available data and research concerning violence against children is of the Best Interests of the Child (CCRC, 2019). The Public Health Agency of Canada has stated that “various forms of violence against children occur in Canada at alarming rates” (PHAC, 2019). Supporting studies have demonstrated that Canadian children experience more violence than adults and that the greatest source of violence against children is in the home – by parents or caregivers (CCRC, 2019). In 2015 alone, 43 children in Canada died from ‘violent assault’ (Statistics Canada, 2015), while countries who have banned spanking completely have seen improvement in their children’s well being (Hamel et al., 2019).

PROTECTION

“Legislation and enforcement are essential to safeguard our society from violence” says the Public Health Agency’s Road Map to End Violence Against Children (PHAC, 2019). Current laws leave children less protected than adults – who can protect themselves in addition to the protection they are afforded by the law.

DETERRENT

Laws aid in eradicating social norms, while deterring and holding perpetrators accountable for violence committed against children (PHAC, 2019). More than once at the Pathfinder civil society workshop was legislation identified as a primary prevention of violence against children (CCRC, 2019). It is especially important to prevent via deterrence in correlation to the fact that the children most at risk are too young to get help (Statistics Canada, 2015).

NATIONAL LAW (EQUITABLE JUSTICE)

National framework will help children across Canada receive equitable justice due to the fact that provincial/territorial laws and rates of violence against children can vary greatly (Statistics Canada, 2015; Canadian Red Cross, 2018). Comprehensive law will help form a backbone for local and sectoral efforts. The 3rd-4th report from the CRC has commented on this (UNCRC, 2012).

RIGHTS WRITTEN IN LAW

Canada has not reviewed its legislation for compliance of the UNCRC since it ratified. The Canadian Charter of Rights and Freedoms does not adequately address the distinct rights of children (the Charter was written before the UNCRC) (Department of Justice, 1982). Having rights written directly into law helps children be less vulnerable due to their special status.

FULFILLING COMMITMENTS

Amending the criminal code to reflect child rights is part of fulfilling Canada's commitments to the UNCRC, 2030 SDGs (specifically SDG 16.2) and accelerating the Global Initiative to End Violence Against Children as a Pathfinding Country (United Nations, 2019; CCRC, 2019). The UNCRC 3rd-4th report mentions no action has been taken regarding recommendations to do with violence against children legislation since the previous 2nd report in 2003 (UNCRC, 2012). UNICEF's 2017 Report Card for Canada showed Canada actually worsened over the past years when it came to SDG 16 (one of the basis' is child homicide rates). Canada ranked 27 out of 31 countries. Canada went from 12th (in 2007) to 25th for wellbeing of children out of 41 high-income countries. A recent global report from UNICEF suggests that Canada may be behind other rich countries due to their laws being much more child centered (UNICEF, 2017).

THE ROADBLOCK

The United Nations has made note of Canada not repealing 43 in all four of its reports to date (1994, 2003 and 2012) (UNCRC, 1994, 2003, 2012). Canada's Parliament has in fact been dealing with the repeal of 43 since January 1994 (Bill C-296), a little over 6 months before the initial CRC report marking its review. The bill did not make it past its first reading (LEGISinfo, 1994). An additional 10 bills have been tabled since then (LEGISinfo, 2019), to no avail. In 2008, the 6th bill (S-209), was studied by the Committee and passed by the Senate – however it didn't go past the first reading in the House of Commons (LEGISinfo, 2008). The latest bill (S-206) didn't make it past its second reading in the Senate (LEGISinfo, 2019). The Response Speech in this reading speaks very strongly against child violence, advocating for harsher penalties – but doesn't believe that spanking is 'violence' (Senate, 52nd, 2016). A previous Sponsor Speech brings up that legally (repeal of 43 or not), trivial matters or matters where force is necessary to protect people are not criminal offences – as is so with all State Parties, including ones with the ban. A sponsor to several of the bills, the Honourable Senator Hervieux-Payette, PC, can be directly quoted "to allow corporal punishment is to allow violence against citizens and to admit that they are not full-fledged citizens. To prohibit corporal punishment sends a clear message that violence against children is no longer tolerated" (Senate, 2007).

The issue was also brought to the Supreme Court in 2004 (Canadian Foundation for Children, Youth and the Law, 2004) though it was ruled that "physical force was acceptable within certain bounds – it cannot be used on children under the age of 2, it cannot involve implements, such as a paddle or a belt, and blows to a child's head are not allowed" (Roher, 2016).

Several Canadians have formed different groups to call for the repeal of Section 43 – often citing that in addition to a violation of the Convention, it is in violation to Sections 7 (Life, Liberty and Security of the Person), 12 (Cruel and Unusual Treatment or Punishment) and 15 (Equality Rights) of the Canadian Charter of Rights and Freedoms (Department of Justice, 1982).

3 PROBLEMS WITH THE REPEAL OF SECTION 43

The problems with repealing section 43 are directly related to Canadian parental views and beliefs.

PAST GENERATIONS

To not spank your child at the time the first Criminal Code came into force (1893), was unacceptable and considered irresponsible parenting. The law, then known as Section 55 (Discipline of Minors), was written almost identically into the first code as it still is today (Criminal Code, 1892). Not spanking your child is a very new concept. Parents have been spanking their children for numerous generations, corresponding to the intergenerational cycle of violence (kids who were spanked grew up to spank their own kids). Even if this generations parents accept no-spanking method, they aren't interested in labelling their own parents or cultural traditions (including religious) as bad, mean or wrong – and certainly not criminal. This can be applied to immigrants and refugees who may come from a place where much more violent discipline than spanking was permitted. Many parents who were spanked believe it had no negative affect on them.

In an article from 'Psychology Today', Noam Shpancer Ph.D. writes "Research has shown that, particularly when we are under duress, we tend to fall back on our primary responses—those that are well learned, those we grew up with. Parenting is stressful, so parents will often fall back on primary responses, those learned early, from their role models for parenting—their own parents" (Shpancer, 2018)

"The WHO acknowledges that changing established societal attitudes and norms is difficult because it requires reshaping deeply ingrained social and cultural norms and behaviours. In Canada, an example might be the norm that some forms of violence, such as corporal punishment of children, are normal and often justifiable" (WHO, 2017; Hamel et al., 2019).

CURRENT GENERATIONS

Although the statistics are decreasing (Perron et al., 2014), a large sum of Canadian parents currently spank their children and/or believe it shouldn't be a criminal offence (Angus Reid Group, Globe and Mail, CTV, 1999). Repealing 43 would overnight criminalize a large number of Canadian parents. The 'Best Interests of the Child' includes efforts to keep the child with their parent, not in care while the parent is in custody. One could argue that parents who legitimately do not know any better are not necessarily committing a criminal offence. Given the recentness of evidence against spanking, many Canadians are uninformed of its negative consequences. Most of the world is new to this type of law or the new evidence against spanking (Millichamp et al., 2006; Sullivan, 2009; Delaware General Assembly, 2012).

FUTURE GENERATIONS

Even parents who are ready to accept that spanking is wrong are still left unequipped with an alternative on how to discipline their children. Alongside being uninformed of the negative of spanking, they are also uninformed of the positive and effectiveness of non-physical discipline. Parenting is very stressful and challenging and people can only use the tools that they are equipped with.

WHERE DO WE GO FROM HERE?

OVERALL COMMENT – GENERAL LAW REFORM AND EDUCATION

Canada is not yet ready for the repeal of 43. However, we cannot stand idle on the advancement of ending violence against children because of misinformed views. It will take time to change social norms and educate parents, educators, policymakers, law enforcement, religious leaders, etc. on the new truth regarding spanking. Through practice and adherence to the UNCRC's and SDGs' recommendations (UNCRC, 2012; United Nations, 2019) in many other ways - Canada has accepted that law reform is a huge step towards ending violence against children. Adopting general legislation to prohibit all forms of violence against children (such as a child-specific violent offence), while still protecting parents under Section 43 will allow us to immediately step up the protection and visibility of children's rights - while buying time to address the problem of lack of education (on both spanking

and children's rights) in preparation for the repeal. The child-specific violent offence would remain in force after the repeal of 43.

CURRENTLY NO ZERO CHILD-SPECIFIC VIOLENT OFFENCES & 718.2 ARGUMENT

Canada currently has zero child-specific violent offences, though more than 20 child-specific offences (Sections 150.1-153, 163.1, 170-172.2, 218, 233, 237-238, 273.3, 279.011, 281-283, and 293.2) including more than 10 child-specific sexual offences. The Canadian Criminal Code has generic violent offences that apply to both adults and children such as; assault, murder and manslaughter (Sections 229, 236 and 265-269) (Criminal Code, 1985). It is often argued that a child-specific violent offence is unnecessary as there is already an aggravating factor to be considered during sentencing when the victim is under 18 – without explicit mention of violence (this amendment was added to Section 718.2 in 2005), (LEGISinfo, 2005; Patil, 2017). 718.2(a)(ii.1) was a good look but in effect it hasn't done very much towards ending violence against children.

STUDY ON SENTENCES

A 2020 study on 'Manslaughter Sentences in Canada with Regard to Violence Against Children' has revealed surprising insight into child violence within Canada regarding criminal sentencing. Some of the inferential statistics produced by this study are somewhat alarming (Annex A).

The Section 718.2 amendment in 2005 (Criminal Code, 1985) appears to correlate with a slight increase in length of manslaughter sentencing and percentages of convictions receiving custodial sentence (82.4%). After 15 years, the increase is very minor – an average of 139 days extra per sentence and only just over 5% increase in convictions receiving custodial sentence (not forgetting that the other 17.6% do not spend any time incarcerated after committing manslaughter). The fact that both appear to continue to rise instills hope and proves that the amendment did have an effect, however small, on penalties – though it also proves that it is not enough (Annex A).

The average manslaughter sentence in Canada is 4 years, 3.5 months, which means full eligibility by default would occur at an unsettling 18 months. The case study appears to show that child-specific occurrences of manslaughter do have somewhat harsher sentences – though even the most severe case from the sample would have eligibility for parole by default at around 4 years (of a 14 year sentence) (Annex A).

The Parole Board of Canada website explains that full parole eligibility begins at 1/3 of time served, or 7 years – whichever is less (Parole Board of Canada, 2020). There are of course stipulations that can push an offender's eligibility back, though by Canadian law this is the default amount of time. None of the cases in the sample gave such stipulations at time of sentencing and many were granted parole on time. 64% of the sentences in the child-specific sample were for less than 8 years. In other words, the majority of child manslaughter cases in the study could receive full parole at a shocking 2 years 8 months – or even earlier (27% received a less than 5 year sentence, making full parole eligibility by default at 1 year 8 months)(Annex A).

It is worth noting that the data pool available for the study was very small. When compared to the statistics, including 30 filicides a year (Dawson, 2015) and the 43 violent child assault deaths in 2015 (Statistics Canada, 2015) - 22 publicly archived cases of child manslaughter over a 17 year period is miniscule. Information identifying numbers of child victims to manslaughter sentences were unavailable when the study procured its other data from Statistics Canada (Statistics Canada, 2020). Having a child-specific violent offence would subsequently help to fix this problem as well, where criminal justice data would inherit a record of violent crimes committed against a child. When you look at this situation in reverse, it is indicative that children are somewhat invisible when it specifically comes to protection from (non-sexual) violence in the Criminal Code (Annex A).

It is also interesting to review the fact that 68% of the samples in the child-specific query were downgraded from murder, something that correlates with the findings of the global study (Covell, 2005). This has a devastating effect on the length of sentencing, showing another need for additional ways to enforce harsher penalties. The 2005 bill proves (LEGISinfo, 2005) that amendments put in place to harshen sentencing can be effective but that

the non-specificity of this principle is not sufficient in providing harsher penalties for violent crimes committed against children (Annex A). Section 718.2(a)(ii.1) doesn't specifically mention violence - there is nothing in the code that specifically denounces violence against children, though with section 43 there is something that specifically says it can be allowed (Criminal Code, 1985). This imbalance not only is missing legislation to explicitly prohibit violence against children but is actually tipping the scales towards allowing it.

HARSHER PENALTIES AND REPRESENTING CANADIAN VALUES

Quotes from Chief Justice Lamer's comments for the court in the case *R. v. M.*(C.A.), paragraph 81 (in 1996): "Our criminal justice system is not simply a vast system of negative penalties designed to prevent objectively harmful conduct by increasing the cost the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. "...in addition to attaching negative consequences to undesirable behaviour, judicial sentences should also be imposed in a manner which positively instills the basic set of communal values shared by all Canadians as expressed by the Criminal Code." (*R. v. M.*, 1996)

The Canadian debate on whether spanking is 'violence' or not is real (despite being outdated), but the question of whether or not Canada is okay with brutal violence against children is not. "Those who perpetrate violence against children should feel the full force of the law"... "If we want to consider measures that would help prevent child abuse or increase penalties for perpetrators who take advantage of children, I would be happy to explore those. This bill does not do that." – quotes taken directly from the Response Speech given by the Honourable Donald Neil Plett in the last Senate Public Bill regarding repeal of Section 43 (S-206) in 2016 (Senate, 52nd, 2016).

REVIEW OF SECTION 718 LAW REFORM (FINDING MORE EFFECTIVE WAYS TO ACHIEVE HARSHER SENTENCING)

Distinguished Professor from the Faculty of Law at the University of Victoria, Gerry Ferguson, prepared a review of Section 718 - including 718.2(a)(ii.1) (Ferguson, 2017). He presents the question "In the context of the Department of Justice's criminal justice review, including reforms to sentencing in the past decade, if the purposes and principles of sentencing in ss. 718-718.21 were to be reformed, how would you reform them and why?" and then goes on to say "I will argue that regardless of whatever reforms are made"... "a revised statement of purposes and principles will never be sufficient on its own to solve the serious sentencing problems that currently exist". He goes over what Parliament is telling judges to do through Section 718 and that it should result in harsher penalties. He says there is value in the goal of this but that this method leaves things too unconnected. He concludes his report with recommendations of deleting various Principles of Sentencing, including 718.2 and replacing it with sentencing guidelines for individual offences/offence groups. He states that this is the most effective way to meaningfully prioritize sentencing objectives. This correlates well with the data analysis from the Manslaughter Sentencing study, revealing that since 718.02(a)(ii.1) was added to the code sentencing lengths have only raised marginally (Annex A; Ferguson, 2017).

Gerry Ferguson has extensive insight regarding law reform, having formerly been the Research Officer at the Law Reform Commission of Canada, and a member of both the National Advisory Council of the Law Commission of Canada and the Board of Directors of the International Centre for Criminal Law Reform. He is currently a Senior Associate of the International Centre for Criminal Law.

HOW LAW REFORM COULD BE IMPLEMENTED

A child-specific violent offence, such as "Violence Against a Child" could be added in many different ways. A comprehensive review by legal reform experts is recommended for forming the most appropriate legislation.

One way a child-specific violent offence could be added to the code is as an additional offence that could be added to other generic violent offences, such as assault or manslaughter. When you are arrested for a violent crime such as assault, murder or manslaughter, you could also be charged with a second offence – 'Violence Against a Child'.

As a stand alone offence (not accompanying a generic violent offence such as assault or manslaughter) it could possibly be used to cover other forms of violence as defined on the justice Canada website (witnessing violence, for example). Such is the practice of the UK child-specific violence law, "Cruelty to Children" (Children and Young Persons Act, 1993).

It is worth noting that while having a child-specific violence law (Cruelty to Children), the UK still has an act in place that permits spanking where it amounts to "reasonable punishment" (Section 58 of UK Children Act 2004) (Children Act, 2004).

This method of an individual offence vs just a sentencing principle will better enforce harsher penalties. This will better reflect the Rights of the Child while also providing a simpler amendment to the code than duplicating each of the current violent offences for specificity to a child (similar to how there are two different sets of sexual offences, one for adults and one children). With Section 43 still in place parents that spank will not suddenly become criminalized, though stigmatized - giving time to correct their ways before its eventual prohibition. Threshold of what is already considered assault wouldn't be changed, though harsher penalties and stigma of violent crimes committed against children would. What can currently land you a charge for assault, murder or manslaughter will remain the same, you will just receive an additional charge and subsequent penalty for it being violence committed against a child.

REFERENCES THAT COULD BE INTERPRETED AS A CANADIAN CHILD-SPECIFIC VIOLENT OFFENCE

UK has had this type of law since 1933 – Cruelty to Persons Under Sixteen (Children and Young Persons Act (1933). The Special Representative of the Secretary-General on Violence Against Children (SRSG/VAC) identified, with urgency, the need to adopt legislation to prohibit all forms of violence, in all settings as a priority focus (SRSG/VAC, 2011). The UNCRC has recommended we have child violence law reform in addition to the 43 repeal (UNCRC, 2012). All 7 of the general Ramifications of 43 repeal (listed in this report) would be met while giving time for the 3 problems with it to be properly taken care of. As a Pathfinding Country, Canada committed to accelerating 16.2 within 3-5 years (2021-2023) and to 'Ending Violence Against Children' altogether by 2030 (PHAC, 2019, CCRC, 2019, United Nations, 2019). Adding a child-specific violent offence now, while educating misinformed Canadians along the gradual repeal of 43 before the end of 10 years, would fulfill both of those commitments.

HUGE PROBLEM IN OTHER COUNTRIES TOO

Discipline in western countries remains a huge controversy. Our neighbouring country the USA is the only State Party who has signed but not yet ratified the UNCRC (Office of the High Commissioner for Human Rights, 2020). One major reason is wanting to retain the ability to govern how they discipline their own children (Herwees, 2014).

ACHIEVING RAMIFICATIONS WHILE GIVING TIME TO TAKE CARE OF 3 PROBLEMS

MESSAGE

A very bold and clearly labelled offence such as "Violence Against a Child", at the federal level, will instill a strong message that violence against children is not acceptable. "Lesser convictions, short sentencing and inconsistent legislation send a message that children within their families have lesser status. It is a message that undermines educational efforts to reduce child abuse." - United Nations Secretary-General's Study in Violence Against Children (Covell, 2005). Having child violence specifically defined on offenders' Criminal Records will help denunciate Violence Against Children.

BEST INTERESTS OF THE CHILD (BIOC)

Several studies show that 60-80% of what is currently considered criminal violence against a child (including most serious offences) stems from physical discipline (Gershoff & Oppenheimer, 2011; CCRC, 2019; Dawson, 2015; Hamel et al. 2019; UNCRC, 2012). "Most physical abuse, in other words, isn't inflicted by sadistic parents who are indiscriminately abusing their children. Rather, most abuse begins with a parent wanting to 'teach the child a lesson' but then escalates to the point of injury" (Gershoff & Oppenheimer, 2011). Other countries have this law. (Children and Young Persons Act, 1933). In Canada, there was an average 30 filicides per year (where a parent kills their own child) between 1961-2011 (Dawson, 2015).

Child manslaughter sentences aren't harsh enough, are aggravated by guilty pleas to lower offences and exacerbated by parole defaults. Child data isn't easy to come by but out of the sample study more than 68% could see full parole at 2 years 8 months – short enough that there could still be children in the family at risk when the offender is released (Annex A). If this is the norm for manslaughter, one can draw assumptions of what lesser offence sentences are like. Having a violent offender re-enter the environment while the child is still small is extremely dangerous and detrimental to the well being and even the life of the child. One study reports 80% of general assault charges receive zero incarceration time (Birkenmayer, 1997). We need harsher penalties to protect our children. The number of simple assault cases is more than 400 times that of manslaughter. Just under 42,000. Simple assault has the highest rate of occurrence of all the offences except impaired driving (more than double) (Birkenmayer, 1997). All violence against children, not just when it results in death, needs to have harsher penalties to truly protect the Best Interests of the Child (UNCRC, 2019, CCRC, 2019).

"It is particularly disturbing that across North America, courts and juries are reluctant to use the full force of the law when parents are convicted of physical assault or homicide of their children. An analysis of Statistics Canada data reveals that whereas parents are the most frequently convicted perpetrators of physical assault against children, they are the least likely to receive a prison disposition (Brzozowski, 2004). Where incarceration is imposed, prison sentences for assaults against children are relatively short (Brzozowski, 2004). When children are murdered by their parents, the lesser charges of infanticide or manslaughter are most often brought in Canada" – United Nations Secretary-General's Study on Violence Against Children (Brzozowski, 2004; Covell, 2005).

The fact that the bill which went the farthest in Parliament (S-209 in 2008) was studied by the Senate Committee (Standing Committee on Legal and Constitutional Affairs) before being passed, reflects upon the fact that education is both necessary and effectually causes a reform in views on spanking. Then, that it was sent to the House of Commons, where it didn't pass, demonstrates that the majority of the House (who are elected by the people, for the people – a representation of the Canadian public) are in need of an update on the latest research in spanking (LEGISinfo, 2008) When presented with the latest scientific and medical evidence on spanking, it is difficult to accept that it is still what's best for the child. Protecting children with a specific law while re-educating parents leading up to 43 Repeal is the Best Interest of the Child (UNCRC, 2012).

PROTECTION

Harsher penalties will directly protect children from repeated violent offences, possibly giving them enough time to mature to protect themselves, in most extreme cases even from death. "The importance of legal reform to protect children cannot be over-emphasized. Reactive measures are inadequate and inappropriate." - United Nations Secretary-General's Study on Violence Against Children (Covell, 2005). In addition to the message it sends, indicating violence against a child on criminal records will help to protect other children by making the public aware that certain persons are a risk.

DETERRENT

Harsher penalties as well as the stigma that would arise from "Violence Against a Child" being a criminal offence, will help to deter offenders, preventing the offences from happening in the first place. Violent offences against children often begin as discipline that escalates quickly. A clear indicator that Violence Against Children is definitively a criminal offence in Canada will help to encourage control when parents are lost in emotional

impulse. A child-specific law explicitly prohibiting violence while section 43 is phased out will reflect upon current views that 'spanking isn't violence' while giving Canadians adequate forewarning that all forms of violence against children must end (including spanking). The denunciation that will occur when having child violence detailed on a criminal record will also help deter potential offenders.

NATIONAL LAW (EQUITABLE JUSTICE)

Children who live in Provinces/Territories with less comprehensive child violence legislature than others will now be covered by federal law.

RIGHTS WRITTEN IN LAW

Violence Against a Child as a specific offence will literally mean Article 19 of the UNCRC (UNCRC, 2012) is written into the criminal code (Criminal Code, 1985). The fact that children are nearly invisible when it comes to violent crimes in the code will be fixed. This will be evident in the change to statistics and data, which would now specifically account for violent crimes committed against children. 718.2(a)(ii.1) does not specifically mention violence committed against children (Criminal Code, 1985), and the violent offences that cover all persons do not specifically mention children (Criminal Code, 1985).

FULFILLING COMMITMENTS

Almost every time the UNCRC or SDGs urge Canada to remove corporal punishment it is alongside the recommendation that Canada also add general legislation that prohibits all forms of violence against children (further from the already existing general offences that do not specify child violence) (United Nations General Assembly, 2006; United Nations, Sustainable Development Goal 16, 2019; United Nations Committee on the Right of the Child, 2012; Special Representative of the Secretary-General on Violence Against Children, 2011; Global Partnership to End Violence Against Children, 2016; Canadian Coalition for the Rights of the Child, 2019; Hamel et al., 2019; Covell, 2005; UNICEF, 2017; UNICEF CANADA, 2017; Senate of Canada, 2007; Senate of Canada, 2016).

It is disheartening that we are in this position as Canadians but it can be turned into an enlightening opportunity to demonstrate to other States Parties who are also reluctant to stop spanking that it should and can be done responsibly. This would fulfill part of our commitment to the Global Partnership to End Violence Against Children to which we are a Pathfinder Country. The specific commitment to accelerate our actions by 2021-2023 and completely eradicate violence against children by 2030 could be fulfilled by a 1-3 year plan for child-specific violence law reform and a 10 year plan to educate parents leading up to the repeal of 43 entirely (PHAC, 2019; United Nations, Sustainable Development Goal 16, 2019).

PAST GENERATIONS:

Time will allow even the most sensitive and/or skeptical to learn to adopt the new norm for spanking. Time is the reason we used to think spanking was okay, it is the reason some people still think it is okay and it is the reason we have gained new evidence that informs us that there is a much better, less detrimental way to discipline. The 'intergenerational cycle of violence' (IGCV) will be interrupted and a new generation will have a much better understanding of more respectful and more effective disciplining, not excluding the even harsher practices some refugees and immigrants to Canada inherit. Cultural and religious traditions can respectfully be reinterpreted, mindful that new scientific and medical evidence of spanking is meant to better children. People who were spanked and "turned out okay" will have the chance to see first-hand that there is a better way, one that must be considered seriously.

CURRENT GENERATIONS:

Since new research has come out the number of spanking in Canada has slowly been going down (Perron et al., 2014). Informing people of the effects of spanking while explicitly making violence against a child an offence will

give them a chance to correct their own behaviour before the permission of corporal punishment is removed from the Canadian Criminal Code. This means that less children would be removed from their parents as a result of physical discipline after Section 43 is repealed. This generation of Canadians will be brought up to speed on the new global evidence regarding spanking and as a result Canada's ranking in Violence Against Children will go down.

FUTURE GENERATIONS:

Today's parents will learn to discipline tomorrow's with more effective, less damaging methods. They will be informed on how detrimental spanking can be on a child's health, mentally and physically, as well the adverse effects it ends up having on entire families, communities and society. They will build confidence in non-physical discipline tools that are more productive than spanking.

PREPARING CANADA FOR THE REPEAL OF SECTION 43

Education and awareness. Immediately send message to start cultivating the idea that spanking is bad in the minds of all Canadians. Ensure we emphasize that this is a new discovery (to avoid generational and cultural sensitivities). New research is given every day showing us how things we once thought were good for our children are actually bad (i.e. rear-facing car seats; babies sleeping on their stomachs and breast milk over formula) – or, things that we simply didn't realize were so harmful (i.e. lead in drinking water, second-hand cigarette smoke and overuse of antibiotics). Begin to educate everyone on spanking

alternatives and how they are much more effective. Begin to educate everyone on children's rights. 10 years (as an absolute deadline) is enough time to train the next generation of parents and effectually change societies' misinformed ideas of spanking. When we can confidently say that Canadians know spanking is wrong then we can responsibly hold them accountable under a criminal offence. Using the rationale that parents who were spanked, spank their children, validates the concept that children who are spared physical discipline will spare their own children as well – creating a new intergenerational cycle of respect and better informed ideas of discipline.

The protection afforded to parents by Section 43 can actually serve to ready them for its repeal.

SUMMARY OF KEY RECOMMENDATIONS

Table 1.

CONCLUSION

Canada very seriously wants to end violence against children but many Canadians have outdated perceptions that spanking isn't 'violence' (Angus Reid Group / Globe and Mail / CTV, 1999; Perron et al., 2014; Senate of Canada, 2016) - despite the fact that the majority of violence against children stems from escalated physical discipline (Gershoff & Oppenheimer, 2011). This is the cause for the Repeal of Section 43 repeatedly being turned down in Parliament (LEGISinfo, 2019). Canadians are simply not ready for the repeal of 43 overnight but can responsibly be made ready in the near future – with steps in place to ensure children are receiving adequate protection during (and after) the change. It is proposed that Canada amend the Canadian Criminal Code with its first child-specific violent offence before 2021-2023, while immediately beginning efforts to update the knowledge of all Canadians to better reflect the evidence shown regarding healthy discipline practices - in preparation for the repeal of 43 (as an absolute deadline) by 2030, with attempts to do it sooner.

It would be in the 'Best Interest of the Child' to educate Canadians so that they can change their ways before the repeal, instead of criminalizing and subsequently separating many parents from their children. The science is strong now and there are many methods of non-physical discipline that are more effective than spanking to begin with. When properly presented with the evidential research regarding the detriments of spanking it is hard to accept that it is still what is best for children.

The Canadian Criminal Code makes no reference that explicitly prohibits violence against children (the generic violent offences do not specifically mention children and the child victim aggravating factors -including breach of trust or authority; do not specifically mention violence). In contrast, there is a reference in the Criminal Code that explicitly permits it – Section 43 (Criminal Code, 1985).

We need a child-specific violent offence to help send a clear message that violence against children isn't allowed and to effectually create harsher sentences – where Section 718 sentencing principles simply aren't enough (Ferguson, 2017; Appendix A).

The statistics on child manslaughter sentences are shocking and alarming (Appendix A). The average amount of custody time for manslaughter is defaulted at less than 18 months! (Full parole is legally defaulted to 1/3 and the average manslaughter sentence is 4 years 3.5 months). The majority of child manslaughter cases are downgraded from an original Murder charge which drastically affects length of sentence. The addition of 718.2(a)(ii.1) in 2005 – a sentencing principle that considers if the victim is under 18, has only very slightly affected sentencing lengths. The average increase since the amendment 15 years ago is a mere 139 days. Adding sentencing principles is not a strong enough way to enforce stiffer sentences (Ferguson, 2017; Appendix A). Canada needs harsher penalties for violent crimes against children and they need them now.

With the plan, Canada's promise to accelerate its actions toward ending violence against children by 2021-2023 (3-5 years from 2018) (Public Health Agency; 2019) as well the Sustainable Development Goal 16.2 – to end all forms of violence against children by 2030 (United Nations, 2019), would be honoured. Its commitment to the Convention of the Rights of the Child and the Charter of Rights and Freedoms would also be better realized, specifically regarding Articles 3, 19, 24, 28, 34, 37 and 39 (UNCRC) and Sections 7, 12 and 15 (CCRF).

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ANNEX

ANNEX A: MANSLAUGHTER SENTENCING AND VIOLENCE AGAINST CHILDREN: A Study of Manslaughter Sentences in Canada with Regards to Violent Crimes Committed Against Children

ANNEX B: ENDING VIOLENCE AGAINST CHILDREN IN CANADA: THE ROADBLOCK AT 43 - KEY RECOMMENDATIONS

MANSLAUGHTER SENTENCING AND VIOLENCE AGAINST CHILDREN

A Study of Manslaughter Sentences in Canada with regards to Violence Crimes Committed Against Children

Allisan Tucker14 – February 2020

QUICK GLANCE AHEAD

Slight increase in length of average sentencing since 2005

Percentages of manslaughter convictions receiving custodial sentence appears to be rising

Average Manslaughter sentence is 4 years, 3.5 months

Average Eligibility for Full Parole is under 18 months (by default)

The most severe sentences are eligible for Full Parole by default around 4 years

Majority of Manslaughter convictions when committed against a child originated as a Murder arrest

Majority of Manslaughter sentences when committed against a child are less than 8 years

(With Full Parole Eligibility by default at 2 years, 8 months)

More than 20% of Manslaughter convictions receive non-custody sentences

Child Manslaughter appears to have slightly harsher sentences

INTRODUCTION

Summary

The main objective of this study is to use data on sentencing of violent offences in Canada to explore its correlation to violence against children through inferential analysis. Sentencing Principle 718.02(a)(ii) - which mandates that offences resulting in abuse against children consider more severe penalties - came into force in 2005. 4, 9 Murder group offences have a minimum sentence of 20 years, while Assault group offences vary too broadly to readily analyze using the methods of this study. The most tangible sentencing to analyze is the Manslaughter offence. Available data on sentences specific to offences committed to people under the age of 18 is limited, some of the analysis is completed using sentencing data for victims of all ages grouped together.

Questions

How have Manslaughter sentences changed since Section 718.2(a)(ii.1)4, 9 came into force?

Slight increase by 139 days (overall average)

How much time is being sentenced for Manslaughter convictions?

4 years, 3.5 months (overall average)

Most severe sentence was 14 years

How much time do offenders of Manslaughter convictions actually spend in custody?

Less than 18 months (overall average) for Full Parole Eligibility by default¹²

Day Parole Eligibility by default after less than one year (overall average)

A little over 20% of convictions result in Non-Custody sentence

How many cases of Murder offences are downgraded to Manslaughter?

68% of Child-Specific Manslaughter sample were originally Murder offences

Outline

Method

Discussion

References

Appendices

METHOD

Sources for Query

Custom data request from Statistics Canada: “Manslaughter cases in adult criminal court, Canada, 2005/2006 – 2017/2018” and “Guilty Manslaughter cases by length of custody, adult criminal court, Canada, 2005/2006 – 2017/2018”¹³

Sources used:

Integrated Criminal Court Survey

Canadian Centre for Justice and Community Safety Statistics

Statistics Canada

Previously published Juristat study: “Sentencing in Adult Provincial Courts, 1997”¹

Accredited news websites (Child Specific Cases)

CBC News³

CTV News⁵

The Globe and Mail⁸

National Post¹⁰

Ottawa Citizen¹¹

Calgary Herald²

Speciality websites and Google Search (Child Murder, child rights) – Used to help identify cases to search for on news sites

Query Terms & Limitations

Table 1: Terms applicable to each data set.

RESULTS

Raw Data & Descriptive Analysis†

Table 2. Statistics Canada Data (Combined).

Table 3: Child-Specific Data Sample.

Inferential Analysis†

Figure 1.

Figure 4.

Figure 5.

Figure 6. Statistics Canada – Percentages of Manslaughter Convictions Receiving Custodial Sentence (All Victims)

DISCUSSION

Challenges

Disparities in data sets make direct comparison difficult

Median vs mode in some cases

Year range differences

Inclusion of Child-Specificity

'Downgrade' occurrence availability

Cannot draw year average from Child-Specific Data sample

22 cases in public news articles from 2002-2019 represent a very small amount of actual cases, when the average Canadian homicide rate is 30/year

Observations from Analysis

Slight increase in average sentencing for Manslaughter (all victims) but increase is very slight – 4.5 months (139 days) on average

Average Manslaughter sentence from Statistics Canada data is roughly 4 years, 3.5 months

Custody time is less than 18 months when Full Parole Eligibility occurs at default

Day Parole Eligibility in less than one year

Percentages of Manslaughter Convictions receiving Custodial Sentence appear to be increasing from 76.7% in first Statistics Canada data set (1993/1994) to 82.4% total average from second data set (2005/2006 – 2017/2018)

The most severe sentences:

Child-Specific Data:

Full sentence, 12 years

Full Parole Eligibility by Default, 4 years

Day Parole Eligibility by Default, 3.5 years

Statistics Canada 1993/94 data:

Full sentence, 14 years

Full Parole Eligibility by Default, 4 years 8 months

Day Parole Eligibility by Default, 4 years 2 months

No data from Statistics Canada 2005/2006 – 2017/2018

Child-Specific Data:

15 out of 22 (68%) cases were Murder charges downgraded to Manslaughter (usually by plea deal)

Guilty cases that resulted in non-custody sentences (not having time incarcerated)

Statistics Canada 1993/1994: 23.3%

Statistic Canada 2005/2006 – 2017/2018: 17.6%

Average of all Statistics Canada Data combined is just over 20%

Child-Specific Data shows that 64% of sample were sentenced to less than 8 years, making;

Full Parole Eligibility by default at 2 years 8 months

Day Parole Eligibility by default at 2 years 2 months

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APPENDICES

APPENDIX I: Original Statistics Canada Tables (from Custom Request):

Table 4. Statistics Canada, Catalogue No. 85C9996 (CCJS – Client Requests): CASES

Table 5. Statistics Canada, Catalogue No. 85C9996 (CCJS – Client Requests): CUSTODY

APPENDIX ii: Additional Figures from Inferential Analysis:

Figure 2. Child-Specific Data: Time Sentenced for Manslaughter

Figure 3. Statistics Canada Data: Time Sentenced for Manslaughter (All Victims) 2005 - 2018

APPENDIX iii: List: Accredited News Articles used in Child-Specific Data by Victim Name

APPENDIX I

Original Statistics Canada Tables (from Custom Request):

Table 4. Statistics Canada, Catalogue No. 85C9996 (CCJS – Client Requests): CASES

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Guilty Manslaughter cases by length of custody, adult criminal court, Canada, 2005/2006 to 2017/2018

APPENDIX II: Additional Figures from Inferential Analysis:

Figure 2. Child-Specific Data: Time Sentenced for Manslaughter

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Figure 2. Child-Specific Data: Time Sentenced for Manslaughter

Figure 3. Statistics Canada Data: Time Sentenced for Manslaughter (All Victims) 2005-2018

APPENDIX III: List: Accredited News Articles used in Child-Specific Data by Victim Name

Notes: Some cases require more than one article to reference all the data being queried. Listings are categorized by child victim names, in ascending chronological order.

Domenic & Gemini Brown:

<https://www.cbc.ca/news/canada/japanese-woman-pleads-guilty-to-killing-her-children-1.318528>

<https://calgaryherald.com/news/crime/mothers-who-kill-their-children-still-confound-society>

Sara Cao:

<https://www.theglobeandmail.com/news/national/mother-walks-free-after-shaking-her-baby-to-death/article741965/>

Michael Helgason:

<https://www.cbc.ca/news/canada/manitoba/no-jail-for-mother-who-killed-baby-triplet-1.778784>

Emmily Lucas:

https://www.thestar.com/news/crime/2011/03/02/mother_gets_6_years_for_killing_daughter_2.html

Camden Bounting:

<https://www.cbc.ca/news/canada/saskatchewan/man-who-killed-son-gets-5-years-1.1044677>

Jaylene Redhead:

<https://www.cbc.ca/news/canada/manitoba/winnipeg-woman-who-killed-daughter-gets-12-years-1.1013159>

<https://www.cbc.ca/news/canada/manitoba/winnipeg-mom-to-face-Murder-charge-1.962510>

Miguel Fernandes:

<https://www.cbc.ca/news/canada/toronto/mother-in-toddler-s-scalding-death-gets-11-years-1.1046627>

<https://toronto.citynews.ca/2007/09/18/charges-against-mother-upgraded-to-Murder-in-scalding-death-of-18-month-old/>

Kawliga Potts:

<https://www.cbc.ca/news/canada/edmonton/child-death-lily-choy-incompetence-1.4226326>

<https://edmontonsun.com/2013/09/17/edmonton-nurse-who-killed-foster-child-should-see-sentence-doubled-crown/wcm/59b05961-0638-4b66-af00-30973905cd31>

Tameron Rose:

<https://www.cbc.ca/news/canada/newfoundland-labrador/newfoundland-baby-death-draws-5-year-sentence-1.1055257>

Matthew Peter-Paul Tucker:

<https://www.cbc.ca/news/canada/nova-scotia/indian-brook-man-handed-8-years-for-son-s-death-1.1277617>

Zaria McCall:

<https://edmonton.ctvnews.ca/maternal-family-of-zaria-mccall-speaking-out-against-5-year-sentence-1.1026706>

Jayden & Connor McCannell:

<https://nationalpost.com/news/canada/allyson-mcconnell-sentencing>

Raime Myers:

<https://www.cbc.ca/news/canada/saskatchewan/regina-man-who-smothered-boy-gets-7-year-prison-sentence-1.1155541>

Aurora Rahman:

<https://www.cbc.ca/news/canada/nova-scotia/halifax-man-gets-6-years-for-baby-daughter-s-death-1.1293269>

Niyati Jha:

<https://www.cbc.ca/news/canada/toronto/nandini-jha-convicted-of-young-daughter-s-beating-death-sentenced-to-10-years-1.3175952>

Honey Jerry:

<https://www.cbc.ca/news/canada/calgary/kinsey-jerry-prison-sentence-september-2016-1.3750207>

Traezlin Starlight:

<https://www.cbc.ca/news/canada/calgary/livia-starlight-Manslaughter-guilty-verdict-traezlin-calgary-1.4195035>

<https://calgaryherald.com/news/crime/mother-charged-in-death-of-her-two-year-old-son-to-spend-holidays-behind-bars>

Jay Johnson:

<https://www.cbc.ca/news/canada/edmonton/toddler-s-death-investigated-by-alberta-s-child-advocate-1.3598175>

Baby Girl Soucie:

<https://ottawacitizen.com/news/local-news/aylmer-mother-sentenced-to-seven-and-a-half-years-for-killing-her-baby>

Kierra Elektra Starr Williams:

<https://www.cbc.ca/news/canada/manitoba/kierra-starr-williams-dad-sentenced-1.4869997>

Emillio Perdomo:

<https://www.cbc.ca/news/canada/calgary/allan-perdomo-Manslaughter-decision-emilio-5-year-old-sentence-1.5299531>

Kurious George Rose-Desmanche:

<https://london.ctvnews.ca/sentence-reduced-for-london-man-convicted-in-infant-son-s-death-1.2738467>

ENDING VIOLENCE AGAINST CHILDREN IN CANADA: THE ROADBLOCK AT SECTION 43

KEY RECOMMENDATIONS

Table 1.

NGO'S: Violence Against Children Lobby Group, Justice for Canadian Children

March 1, 2020