

Corporal punishment of children in Canada: Briefing for the Universal Periodic Review, 44th session, Oct./Nov. 2023



*From the Global Partnership to End Violence Against Children,
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This submission provides an update on the legality of corporal punishment of children in Canada since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, some alternative care settings, day care and some schools.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Canada, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3rd cycle UPR of Canada in 2018.

We hope the Working Group will note with concern the legality of corporal punishment of children in Canada. We hope states will raise the issue during the review this year and make a specific recommendation that Canada accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Canada in the 3rd cycle UPR (2018) and progress since

1.1 Canada was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 30). Recommendations to prohibit corporal punishment in all settings were made.¹ 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

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

protection laws”.²

1.2 Following the review, in May 2022, a private member’s bill to repeal section 43 of the Criminal Code 1985 (Bill C-273) was tabled in the House of Commons.³ Another bill to repeal section 43 was tabled in the Senate (Bill S-251), in June 2022. The law reform process is still in progress.

1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Canada We hope states will raise the issue during the review this year and make a specific recommendation that Canada intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

2 Legality of corporal punishment in Canada

Summary of current law and opportunities for achieving 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.

2.1 **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.⁴

2.2 In Quebec, section 43 of the federal Criminal Code is applicable. In June 2022, Quebec passed a new law, Bill 2,⁵ which makes many amendments to its Civil Code and other laws. The new law includes provisions to combat family violence. However, Bill 2 does not mention corporal punishment. It is unclear whether it intends to ban corporal punishment of children in the home.

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

³ <https://twitter.com/MPJulian/status/1527342156134117378?s=20&t=WqeOZ6HCYOxbaZDMXrANSA> – accessed on 16 June 2022

⁴ *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, file no. 29113

⁵ Bill 2 (2022, chapter 2) An Act respecting family law reform with regard to filiation and amending the Civil Code in relation to personality rights and civil status

- 2.3 *Alternative care settings (partially lawful)*:** Corporal punishment is prohibited in foster care in **Alberta** (Section 9(a), Residential Facilities Licensing Regulation, Alberta Regulation 161/2004), British Columbia (Section 70(1)(e), Child, Family and Community Service Act), Manitoba (Section 20(a), Foster Homes Licensing Regulation, Manitoba Regulation 18/99), Newfoundland and Labrador (Section 31(2) Children, Youth and Families Regulations, NLR 38/19), Ontario (Section 4, Child, Youth and Family Services Act, 2017), Quebec (to be confirmed) and Yukon (Section 88(1)(a), Child and Family Services Act). There is no explicit prohibition in foster care in New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and Saskatchewan and. 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.
- 2.4 *Day care (partially lawful)*:** Corporal punishment is prohibited in childcare in all provinces and territories except Quebec.
- 2.5 *Schools (partially lawful)*:** 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.
- 2.6 *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.
- 2.7 *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

- 3.1 *CRC*:** The Committee on the Rights of the Child has four 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 1995,⁶ on the second report in 2003⁷ and on the third/fourth report in 2012⁸ and on the state party’s fifth-sixth report in 2022.⁹

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

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

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

⁹ 9 June 2022, CRC/C/CAN/CO/5-6, Concluding observations on the combined fifth and sixth report, para. 25

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