

Corporal punishment of children in Canada: Briefing for the Universal Periodic Review, 30th session, 2018

From the Global Initiative to End All Corporal Punishment of Children, September 2017



Global Initiative to
**End All Corporal Punishment
of Children**

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 repeated recommendations to prohibit it by the Committee on the Rights of the Child and during the 2nd cycle UPR of Canada in 2013.

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 in 2018 and make a specific recommendation that Canada enact Bill S-206 to clearly prohibit all corporal punishment of children in every setting of their lives and repeal the section 43 of the Criminal Code, as a matter of priority.

1 Review of Canada in the 2nd cycle UPR (2013) and progress since

- 1.1 Canada was reviewed in the second cycle of the Universal Periodic Review in 2013 (session 16). The issue of corporal punishment of children was raised in the compilation of UN information¹ and the summary of stakeholders' information.² During the review, the Government rejected a recommendation to explicitly criminalise corporal punishment, 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."³
- 1.2 Since the review, a 2015 report of the Truth and Reconciliation Commission of Canada has recommended the repeal of section 43. Bill S-206 has been brought to the Senate to that end but has yet to pass its Second Reading.
- 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 in 2018 and make a specific recommendation that Canada enact Bill S-206 to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal the section 43 of the Criminal Code, as a matter of urgency.**

¹ 7 February 2013, A/HRC/WG.6/16/CAN/2, Compilation of UN information, para. 36

² 29 January 2013, A/HRC/WG.6/16/CAN/3, Summary of stakeholders' views, para. 43

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

2 Legality of corporal punishment in Canada

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Canada is lawful in the home and in some alternative care and day care settings. It is unlawful in most schools but not all and in the penal system. Bill S-206 on the repeal of Section 43 of the Criminal Code is currently being discussed by the Senate, which must vote favourably on it before it is transmitted to the House of Commons. Enacting the Bill would achieve prohibition of all corporal punishment.

- 2.1 **Home (*lawful*)**: 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 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.
- 2.2 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”.⁵ 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.”⁶
- 2.3 Numerous bills which would repeal section 43 of the Criminal Code have been introduced but failed to progress through Parliament. However, Bill S-206 (a private members’ bill to repeal section 43 of the Criminal Code) is currently being debated in the Senate.⁷ If passed by the Senate, the Bill will need to be examined by the House of Commons.
- 2.4 **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 and Manitoba. In Ontario, it is prohibited in provincially-licensed childcare programmes and foster homes, and for all children receiving

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

⁵ Truth and Reconciliation Commission of Canada (2015), *Truth and Reconciliation Commission of Canada: Calls to Action*, Call to Action No. 6

⁶ 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

⁷ www.parl.gc.ca/, accessed 8 March 2017

services from a child protection agency or other service provider licensed or approved by the province.

2.5 **Day care (*partially lawful*)**: Corporal punishment is prohibited in child care in all states and territories except New Brunswick. In Quebec, as with parents, carers have no right of correction under the Civil Code, but section 43 of the federal Criminal Code applies.

2.6 **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.

2.7 **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.

2.8 **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 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 1995,⁸ on the second report in 2003⁹ and on the third/fourth report in 2012.¹⁰

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and since 2011 the Committee on the Rights of Persons with Disabilities.

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

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

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