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 Positive Discipline In Everyday Life

 National Collaborating Centre for Indigenous Health

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 Canadian Coalition for the Rights of Children
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RATIONALE FOR REPEAL OF **SECTION 43** OF CANADA'S CRIMINAL CODE

Section 43 of the Criminal Code of Canada

Every parent, schoolteacher and person standing in the place of a parent is justified in using force by way of correction of 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.

This defence dates from 1892, a codification of the English common law which treated children as chattels. Corrective assault of all other Canadian citizens by persons in authority has been prohibited, including that of apprentices, sailors, convicted offenders and inmates.

Section 43 Violates Children's Rights to Protection

1. In 1991, Canada ratified the UN [Convention on the Rights of the Child](#) (CRC), committing itself to: protecting children from all forms of violence (Article 19); acting in the best interests of children (Article 3); ensuring that school discipline respects children's human dignity (Article 28); and protecting the child from degrading treatment or punishment (Article 37).
2. In its [Concluding Observations](#) of 1995, 2003 and 2012 the UN Committee on the Rights of the Child called for repeal of section 43 with increasing urgency. The Committee has expressed "grave concern" about Canada's continuing inaction on this issue.¹
3. In 2002, the Special Rapporteur of the UN Commission on Human Rights noted that physical punishment is inconsistent with the Universal Declaration of Human Rights and called upon states to take legal measures to ensure children's rights to protection.²
4. In 2006, the [UN Secretary-General's Study on Violence against Children](#) urged states to "end the justification of violence against children, whether accepted as 'tradition' or disguised as 'discipline'" and concluded that "Governments are ultimately responsible for the protection of children. It is therefore up to Governments to act now, to fulfil their human rights obligations."³
5. In 2006, the UN Committee on the Rights of the Child issued [General Comment No. 8](#), which emphasized that the CRC "requires the removal of any provisions (in statute or common - case - law) that allow some degree of violence against children (e.g., 'reasonable' or 'moderate' chastisement or correction) in their homes/families or any other setting."⁴
6. In 2007, Canada's [Standing Senate Committee on Human Rights](#) recommended repeal of section 43 by April 2009.⁵

7. The 2018 Report of the United Nations Human Rights Council's Working Group on the Universal Periodic Review calls on Canada to, among other things:
 - a. "Explicitly prohibit corporal punishment of children in all settings, including at home" (142.213 Montenegro).
 - b. "Enact and implement Bill S-206 as soon as possible" (142.214 Sweden).
 - c. "Continue the important work on reconciliation with Canada's indigenous peoples by fulfilling the Government's promise to implement all of the recommendations of the Truth and Reconciliation Commission in a timely manner" (142.249 Sri Lanka).
 - d. "Implement all of the 'calls to action' from the Truth and Reconciliation Commission" (142.250 Australia).
8. The Canadian Charter of Rights and Freedoms guarantees all citizens' rights to security of the person (Section 7) and equal protection of the law regardless of age (Section 15).

Physical Punishment Is Linked to Broad and Enduring Personal and Societal Harm

1. 75% of substantiated physical abuse cases in Canada arise from incidents of physical punishment.⁶ In addition to its impact on children, physical abuse places an enormous economic burden on Canada.⁷
2. Across 75 studies, even mild physical punishment predicts poorer mental health, negative parent-child relationships, lower moral internalization, increased anti-social behaviour (bullying, dating violence, peer aggression), and increased risk of violence toward intimate partners and children in adulthood.⁸
3. Across 69 prospective longitudinal studies, physical punishment was found to increase child aggression and other behaviour problems over time and to place parents at risk of inflicting increasingly severe violence.⁹
4. Physical punishment can undermine brain development, activating neural systems that deal with threat¹⁰ and reducing the volume of the areas involved in self-regulation and executive function¹¹
5. No evidence has ever been found of long-term benefits.

Canada is Out of Step with International Developments

1. 63 States have prohibited physical punishment of children in all settings, as well as Scotland and Wales; 26 have clearly and publicly committed to doing so;¹² together, these constitute more than half of UN member states.
2. In 2008, the Council of Europe set a goal of abolishing physical punishment across Europe.¹³ To date, 34 of its 47 member states have enacted prohibitions.

3. 23 of the 28 European Union member states have achieved full prohibition.
4. All UN member states have adopted the target of ending all forms of violence against children under the new Agenda for Sustainable Development 2030 (Target 16.2).¹⁴ One of three indicators that will be used to measure progress toward this target is the proportion of children aged 1-17 years who experienced any physical punishment and/or psychological aggression by caregivers in the past month.¹⁵
5. As of 2018, Canada is a Pathfinding Country under the Global Partnership to End Violence Against Children.¹⁶ This commitment includes implementation of the INSPIRE initiative, which calls for prohibition of all physical punishment of children.¹⁷
6. In 2021, the World Health Organization called for the “implementation and enforcement of laws to prohibit physical punishment.”¹⁸

Section 43 Is Out of Step with Canadian Attitudes

1. The Truth and Reconciliation Commission of Canada has identified repeal of section 43 as its sixth call to action,¹⁹ stating “Corporal punishment is a relic of a discredited past and has no place in Canadian schools or homes.”
2. To date, more than 660 respected organizations representing most sectors have endorsed the Canadian Joint Statement on Physical Punishment of Children and Youth, which recommends repeal of section 43.²⁰
3. Canadians’ approval of physical punishment has declined steadily; today only 17% approve of it.²¹
4. The proportion of parents using physical punishment declined from 50% in 1994 to 30% in 2008.²²
5. A 2003 national survey found that 51% of Canadians were in favour of repeal of section 43; 80% would be in favour of repeal if it would reduce child abuse.²³

The Supreme Court of Canada’s Ruling on Section 43 Is Inadequate

1. In 2004, the Supreme Court limited section 43 protection to parents who strike children over 2 and under 13, below the head, with their hands. This ruling contradicted the recommendations of the UN Committee on the Rights of the Child, as well as the consistent findings of research showing negative outcomes of even ‘mild’ physical punishment for all children.
2. Lower courts have applied the Supreme Court’s limits inconsistently; child-serving and law enforcement organizations are confused by them.
3. This ruling does not allow for considerations of proportionality, an essential element of normal criminal law defences.
4. The ruling was interpreted by many parents as a ‘green light’ to strike their children.²⁴
5. Since 2004 there has been a substantial increase in research evidence documenting physical punishment’s lifespan and societal harms, and in international condemnation of the practice.

Implications of Repealing Section 43

1. Repeal would symbolize this government's commitment to upholding children's human rights to be raised in a world free of violence²⁵ and ensuring that every child gets the best possible start in life.²⁶
2. Repeal would support and facilitate multi-sectoral initiatives across the country aimed at ending violence against children and domestic violence, and promoting healthy family relationships.
3. Repeal would allow clear and meaningful education of parents, police, child welfare workers and prosecutors.
4. The Criminal Code defences of self-defence, defence of another person, and defence of property would remain available, as would the common-law defence of necessary restraint, which is well-accepted in law and policy.
5. Protocols for warnings, prosecutions and apprehensions, and supportive services for parents, can be carefully developed to ensure that the best interests of all children are upheld.
6. In those countries where physical punishment has been prohibited and police and child welfare investigations are tracked, there has been no increase in criminal prosecutions or child welfare apprehensions in minor cases – only decreased support for, and use of, physical punishment.²⁷

¹ Committee on the Rights of the Child (2012). *Concluding Observations on the Combined Third and Fourth Periodic Report of Canada*, CRC/C/CAN/CP/3-4, para. 44.

² van Boven, T. (2002). *Report of the Special Rapporteur of the Commission on Human Rights on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/57/Rev. 1.

³ Pinheiro, P.S. (2006). *World Report on Violence against Children*. Geneva: United Nations. Pages 3, 355.

⁴ Committee on the Rights of the Child (2006). *General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment*, para. 31.

⁵ Standing Senate Committee on Human Rights (2007). *Children: The Silenced Citizens. Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, page 19.

⁶ Durrant, J.E., Trocmé, N., Fallon, B., Black, T., & Knoke, D. (2006). *Punitive Violence against Children in Canada*. Centre of Excellence for Child Welfare, Information Sheet #41E.

⁷ Bowlus, A., McKenna, K., Tanis, D., & Wright, D. (2003). *The Economic Costs and Consequences of Child Abuse in Canada: Report to the Law Commission of Canada*.

⁸ Gershoff, E.T. & Grogan-Kaylor (2016). Spanking and child outcomes: Old controversies and new meta-analyses. *Journal of Family Psychology*, 30, 453-469.

⁹ Heilmann, A., Mehay, A., Watt, R.G., Kelly, Y., Durrant, J.E., van Turnhout, J., & Gershoff, E.T. (2021). Physical punishment and child outcomes: A narrative review of prospective studies. *The Lancet*. Published online June 28.

¹⁰ Cuartas, J., Weissman, D.G., Sheridan, M.A., Lengua, L., & McLaughlin, K.A. (2021). Corporal punishment and elevated neural response to threat in children. *Child Development*, 92, 821-832.

¹¹ Tomoda, A., Suzuki, H., Rabi, K., Sheu, Y.-S., Polcari, A., & Teicher, M.H. (2009). Reduced prefrontal cortical gray matter volume in young adults exposed to harsh corporal punishment. *Neuroimage*, 47, T66-T71.

- 12 States with prohibitions: Albania, Andorra, Argentina, Austria, Benin, Bolivia, Brazil, Bulgaria, Cabo Verde, Colombia, Congo, Costa Rica, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Guinea, Honduras, Hungary, Iceland, Ireland, Israel, Japan, Kenya, Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Mongolia, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Seychelles, Slovenia, South Africa, South Korea, South Sudan, Spain, Sweden, TFYR Macedonia, Togo, Tunisia, Turkmenistan, Ukraine, Uruguay, Venezuela.
- 13 Council of Europe. *Raise your Hand against Smacking!*
- 14 United Nations. *Transforming our world: the 2030 Agenda for Sustainable Development*.
- 15 SDG indicators: Metadata repository. New York: UN Department of Economic and Social Affairs, Statistics Division.
- 16 Global Partnership to End Violence Against Children. Pathfinding Countries.
- 17 World Health Organization (2016). *INSPIRE: Seven Strategies for Ending Violence against Children*. Geneva: WHO.
- 18 World Health Organization (2021). *Fact Sheet: Corporal Punishment and Health*.
- 19 Truth and Reconciliation Commission of Canada (2015). *Calls to Action*. Winnipeg: TRC. Page 1.
- 20 Durrant, J.E., Ensom, R., & Coalition on Physical Punishment of Children and Youth (2004). Endorsing organizations include school boards in every province and territory, Arctic Children and Youth Foundation, Big Brothers Big Sisters of Canada, Canadian Academy of Child and Adolescent Psychiatry, Canadian Centre for Child Protection, Canadian Centre for Ethics in Sport, Canadian Council of Child and Youth Advocates, Canadian Medical Association, Canadian Mental Health Association, Canadian Paediatric Society, Canadian Red Cross, Centre for Addiction and Mental Health (CAMH), Children's Healthcare Canada, Coaching Association of Canada, Islamic Social Services Association Canada, Mental Health Commission of Canada, The Anglican Church of Canada, The Hospital for Sick Children (SickKids), The Presbyterian Church in Canada, The Students Commission, The United Church of Canada, UNICEF Canada.
- 21 Bell, T., & Romano, E. (2012). Opinions about child corporal punishment and influencing factors. *Journal of Interpersonal Violence*, 27(11), 2208-2229.
- 22 Fréchette, S., & Romano, E. (2015). Change in corporal punishment over time in a representative sample of Canadian parents. *Journal of Family Psychology*, 29(4), 507-517.
- 23 Toronto Public Health (2003). *National Survey on Canadians' Attitudes on Section 43 of the Criminal Code*.
- 24 Durrant, J.E., Sigvaldason, N., & Bednar, L. (2008). What did the Canadian public learn from the 2004 Supreme Court decision on physical punishment? *International Journal of Children's Rights*, 16, 229-247.
- 25 Statement by the Prime Minister of Canada on National Child Day, 2015.
- 26 Statement by the Minister of Families, Children and Social Development on National Child Day, 2015.
- 27 Durrant, J.E. (2019). Corporal punishment and the law in global perspective. In J. G. Dwyer (Ed.), *Oxford Handbook of Children and the Law*. Oxford University Press, Oxford, UK. Published online April. doi: 10.1093/oxfordhb/9780190694395.013.15