

CORPORAL PUNISHMENT



POLICY BENCH

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Overview

- Corporal punishment is currently legal in Canada, though both research and practice increasingly encourage alternative approaches to discipline.
- Legal reform to prohibit corporal punishment would not only affect children and families, but also teachers, educators, child welfare workers, other professionals, judicial and law enforcement officials.
- The question of whether corporal punishment of children should be legally prohibited remains controversial, as there are many concerns over the impact of legal reform. Though some gaps in the literature remain, most research and experts agree that legal prohibition of corporal punishment in Canada would be supported by both evidence-based and child's rights approaches.
- There is evidence to suggest legislative prohibition paired with education programs informing the public on the harms associated with corporal punishment as well as alternative discipline techniques is the best approach for changing attitudes around corporal punishment to protect children from harm.

What is the Issue?

Globally, violence against children is widespread in homes, schools, and communities, despite growing awareness of the negative outcomes associated with physical violence, including corporal punishment, for such a physically and psychologically vulnerable group.

There are three key areas of concern around the use and prohibition of corporal punishment of children: a) Concerns around the human rights and dignity of children; b) concerns around the impact of corporal punishment on children; and c) concerns around the impact of bans on corporal punishment.

Defining corporal punishment is important from a legal perspective, yet this is challenging as there is no clear distinction between physical punishment and physical abuse. The United Nations Committee on the Rights of the Child defines corporal punishment as:

“any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”, and suggests it can be understood in terms of its intended aim, which is typically to change a child's behaviour.^{1,2}

Legislative Overview

Corporal punishment is currently fully defensible under section 43 of the Canadian *Criminal Code*³, making children the only group of citizens in Canada who can be legally subjected to physical violence without criminal sanction:

“Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction towards 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.”

The 2004 Supreme Court of Canada case *Canadian Foundation for Children, Youth and the Law v Canada* attempted to clarify s43, but did not revise the actual provision. This case specified:

- Force must be by way of correction, intended for educative/corrective purposes
- The child must be capable of understanding and learning from correction (2-12yrs old)
- Force must be reasonable under the circumstances – only transitory and trifling
- Strikes to the head and strikes involving objects are never defensible
- Punishment cannot cause physical injury, be degrading, inhumane nor harmful



Responses to the 2004 decision, and subsequent maintenance of s43 in the Code have led to two schools of thought⁴:

- **Limitation Position** → within certain boundaries, corporal punishment is acceptable
- **Abolition Position** → corporal punishment is never acceptable

Justifications for the abolition position includes:

- S43 violates youths' rights under the *Canadian Charter of Rights and Freedoms*
- Because s43's text has not been amended, there is inconsistent application across Canada, specifically in schools, childcare, and foster-care settings.
- Subjective nature of interpretation challenges parents' ability to know the court's distinction between reasonable and unreasonable corrective force.
- Allowing some forms of violence in some situations but not all is confusing for families and professionals.

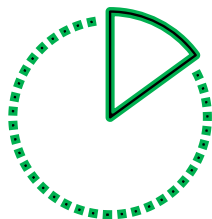
Global Context (as of Sept 2024⁵)

67 states around the world prohibited corporal punishment in all settings, meaning in the home, childcare, foster-care and school environments

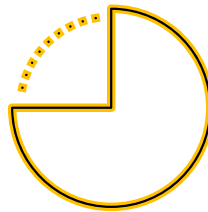
At least 26 states have committed to law reform to achieve full legal ban



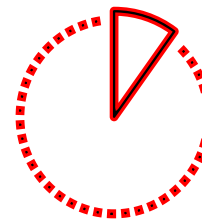
14% of world's children fully protected in law from corporal punishment



76% of all children only protected in some settings



10% of all children not protected at all



Key Guidelines, Obligations and Positions on Corporal Punishment

Canada has various obligations to end all forms of violence against children, these include:

Truth and Reconciliation Commission's Calls to Action	(#6) Calls upon the Government of Canada to repeal Section 43 of the Criminal Code
United Nations Convention on Rights of the Child	To protect children from physical and mental violence and maltreatment, to ensure school discipline is administered consistently with a child's human dignity, and to ensure no child is subject to inhumane/degrading treatment or punishment. Under <i>General Comment 8</i> - to eliminate all corporal punishment as part of the obligation to protect children from all forms of violence. ¹
Universal Declaration of Human Rights	To ensure no one shall be subject to inhumane or degrading treatment or punishment, and to recognize childhood entitles youth to special care
2030 Sustainable Development Goals #16.2	To end abuse, exploitation, trafficking and all forms of violence against and torture of children by 2030.

Key health bodies have made statements on the topic, including (but not limited to) the *Joint Statement on Physical Punishment of Youth and Children*, the *Canadian Coalition for the Rights of Children*, *American Academy of Pediatrics*, *American Psychological Association*, and the *World Health Organization*.

On the whole, these bodies call for the total prohibition of corporal punishment against children in all settings. They encourage the use of social and parental education on corporal punishment's effects on children, and positive alternative disciplinary measures to permanently stop the use of corporal punishment.

Canada's maintenance of s43 is inconsistent with global guidelines and obligations Canada follows and is signatory to.

Arguments and Evidence Around Corporal Punishment

1	Corporal punishment is not harmful, and may be beneficial for children	Supporters of corporal punishment argue that it is not necessarily harmful and may even have benefits for children in some circumstances. However, scholars argue that research evidence shows the only potential benefit to be increased compliance from children in the short term, where the goal is to establish long term compliance. ⁶ While some studies have found either a small or no relationship between corporal punishment and negative child outcomes, this appears to be an exception in the literature. ⁷ Evidence from this literature shows multiple adverse effects on children overall, including both short-term and long-term impacts. Studies also show a positive association between physical punishment occurrence and abuse and have found long term physical harm derived from the infliction of corporal punishment during childhood. ⁸
2	Banning corporal punishment goes against parents' rights	Some argue parenting is a private role, and parents have the right to control and to choose how to raise and discipline their children without interference from the government. However, others note that parental rights have to be considered <i>in relation to</i> respect for child rights and autonomy: children have the right to equal protection from violence as adults do.

		<p>Policymakers must follow the principles of justice and consider the balance of rights for both parents and children, as well as the benefits and risks of laws on corporal punishment for both groups.</p>
3	<p>The public would not support a ban on corporal punishment</p>	<p>Because corporal punishment in the home is still widely accepted in many places, some argue society is not ready for legal reform.</p> <p>Literature suggests that increased knowledge about the issue and the harms associated with corporal punishment can change parents' beliefs and increase support for a ban.⁹ The growing number of professional organizations in Canada that have endorsed the <i>Joint Statement</i> also justifies the point that the government would have strong support for legislative reform.¹⁰</p> <p>Studies also suggest that many other countries have prohibited corporal punishment ahead of public opinion, and public attitudes changed thereafter, implying this concern need not invalidate the reform process.¹²</p>
4	<p>A ban on corporal punishment would be difficult to enforce</p>	<p>Some argue there are insufficient resources for law enforcement officials to accept this additional responsibility: it is difficult to observe parental discipline behaviors that take place in private, and to attempt to do so would be exorbitantly time consuming.⁸</p> <p>In response, it has been suggested that the primary purpose of reform must be prevention of violence against children, which would help reduce the need for using resources to investigate incidents after they occur.⁹ Current legislation around corporal punishment is inconsistent, so a benefit of a ban in Canada would be having a standardized federal law that would reign paramount across the country. Another key element of legal reform includes establishing systematic monitoring and evaluation mechanisms to measure progress and identify gaps in enforcement. There is no suggestion a complete enforcement plan needs to be implemented with the reform.</p>
5	<p>Corporal punishment should still be allowed under some conditions</p>	<p>This argument follows the limitation position: if punishment falls within reasonable limits, it should still be acceptable.</p> <p>Critiques of the position include: protecting some but not all children violates universal right to protection from harm and undermines child protection efforts, undermines public education messages, renders the legal definition of abusive and non-abusive force meaningless, and contributes to confusion for professionals and public alike.</p>
6	<p>A ban on corporal punishment would negatively impact parents</p>	<p>Some argue a ban could lead to more parents being criminalized for minor offences that would have been considered incidents of reasonable force under the current legislation, which would add strain to the justice system and cause harm to families.¹¹</p> <p>Responses to this argument point to various measures in place through both the UN CRC and Canada's own legal system ensuring a ban on corporal punishment will not significantly increase the number of prosecutions against parents. This includes the <i>de minimis principle</i> and other defences under common law (necessity, defense of person, property). It is important to note the primary purpose of legal prohibition is not to punish caregivers, but to keep children safe.¹¹</p>
7	<p>A ban on corporal punishment</p>	<p>Teachers and educators suggest the use of <i>reasonable</i> physical force is sometimes necessary in cases where intervention is required to maintain the safety and security of students and teachers, and that teachers may be less likely to intervene in</p>

	<p>could negatively impact teachers</p>	<p>situations involving students out of fear of criminalization or charges without this defense.</p> <p>However, some scholars argue allowing corporal punishment in schools undermines the benefits of education, and there is no evidence that corporal punishment enhances learning in the classroom.^{12,13} School corporal punishment has been positively associated with internalizing and externalizing behavioral problems, and negatively associated with school performance.¹⁴ Overall, the negative effects of corporal punishment in schools appears to be consistent with those found in the home. Further, marginalized children (including those with disabilities) may be more likely subjected to corporal punishment and physical restraint in schools, which is particularly concerning given the disproportionately greater risk of negative outcomes for these students.¹³</p>
<p>8</p>	<p>A ban on corporal punishment would negatively impact certain communities</p>	<p>Arguments have been made that a full legal ban would impact some parents more than others: specifically Black and Indigenous communities, considering the overrepresentation of these communities in the Criminal Justice system and child welfare system in Canada, and the cultural differences imbued in the use of physical punishment.</p> <p>Proponents of the <i>cultural normativeness</i> framework suggest the effects of corporal punishment may be beneficial in cultures where it is more normative. However, research shows that physical punishment is associated with negative outcomes for children across countries and communities, regardless of the race or cultural background.^{15,16} The argument that acceptability of corporal punishment might vary by culture is also irrelevant from a human rights perspective: corporal punishment of any child can be viewed as a violation of their fundamental rights regardless of culture, and that all children are entitled to the same level of protection from violence.¹⁷</p>

Alternative Approaches

Supporters of legal bans on corporal punishment argue alternative approaches to disciplining children can be more effective and more beneficial for child development, and that these approaches can be taught to parents and families.

Considering that research demonstrates parent attitudes, beliefs and previous experiences can be risk factors for the use of corporal punishment on children, parenting interventions that target parent attitudes and behaviors are a critical strategy for reducing violence against children. Literature suggests evidence-based parenting supports (EBPS) lead to positive effects on parent behaviour, child behaviour and family relationships, specifically in sustained reductions of disruptive child behaviours and externalizing behaviour problems.¹⁸

Another important strategy is to target community level factors that increase the risk of corporal punishment through broader population-based public education campaigns.

One program frequently cited in the literature is *Positive Discipline in Everyday Parenting (PDEP)*, a universal primary prevention program that aims to help parents build the necessary knowledge and skills to foster healthy development in their children in the long term. The approach aims to change parents' views of their own role, shifting their attitudes around discipline away from coercion, control and punishment towards more respectful, non-violent and collaborative problem solving and mentorship.¹⁹



- Specific objectives of this intervention are to
 - Reduce approval of physical punishment
 - Normalize parent-child conflict
 - Strengthen parenting self-efficacy

Evaluations of the PDEP program in Canada and other countries have shown it to be effective in achieving its short-term objectives and is perceived by parents to be beneficial.²⁰ A cross national study (across 13 countries) suggested the PDEP program is potentially more valuable in countries where additional parenting resources are less readily available.²¹

Lessons from Other Countries

Sweden



- First country to implement a comprehensive corporal punishment ban in 1979.
- Implemented a national public education campaign along with the ban with the objective to change attitudes around the use of corporal punishment and set clear guidelines for parents and professionals to promote earlier intervention.
- Since the ban:²²
 - public support for corporal punishment has declined and remained low.
 - no reported change in the rate of prosecutions of child physical assault cases since the 80s
 - no increase in long term placements in out of home care.

New Zealand



- Legislative defense (similar to Canada's) was repealed in 2007, making physical punishment of children illegal.
- Police have discretion to not prosecute minor complaints about the use of force against a child by a parent or caregiver.
- Findings from police reports show police did make use of their discretion not to prosecute minor cases, and parents were offered support where appropriate.²³
 - Majority of incidents of "smacking" and minor acts of physical discipline that police attended to were referred to Child Protective Services or other supports.
- Therefore, initial fears that "good parents" would be criminalized were not realized.

Summary of Findings from Cross Country Studies

- Both legal prohibition and information campaigns help to reduce physical punishment of children, but neither strategy on its own is sufficient for behavior change: bans were most effective when accompanied by education campaigns.²⁴
- Prohibiting corporal punishment is associated with declines in actual violence against children, and indirectly effects parent's behavior by influencing parents' definitions of violence and approval of corporal punishment.²⁴
- Research suggest legal bans are more likely to be passed in countries with pre-existing public support for such a ban, and implementation of a ban will then reinforce these attitudes, leading to continuing decline in support for corporal punishment.²⁵
- National bans on corporal punishment have also been associated with lower violence among adolescents; and this association was stronger in countries with a comprehensive ban rather than a partial ban.²⁶
 - However, most studies evaluating laws across countries are limited in design, making it difficult to determine the causal effect of laws separately from other factors.

Implications of Findings

For Policy

Data and evaluation studies in other countries shows national prohibitions on corporal punishment can be implemented successfully, although the effectiveness of such laws may depend on other factors like prevailing social norms, availability of additional information, and parenting supports.

Bans are shown to be most successful in countries with already declining support for corporal punishment: studies show majority of Canadians are supportive of a ban on corporal punishment, and evidence suggests support would be even higher if the public was well informed about the issue and purpose of such a law.²⁷

Besides legislation to prohibit corporal punishment of children, the literature suggests the following additional measures are needed to ensure legal reform is both acceptable and effective across different communities in Canada:

- 1) Law enforcement strategies that include alternatives to prosecution
- 2) Public education campaigns to raise awareness of the harms of violence against children and the benefits of alternative discipline approaches
- 3) Access to parenting supports and services for families, including culturally appropriate community-based services
- 4) Monitoring and evaluation of the impact of these strategies

In addition, any legislative change must be accompanied by engagement with different racial, ethnic and cultural groups to enhance the effectiveness of the law and ensure those affected by the legislation are supported by each of the above strategies.

For Service Providers

- **Physicians** are a credible source of information and can urge the government to prohibit corporal punishment of children and engage with other professionals to send a clear message about corporal punishment at a population level.
 - This can be done while also educating parents and families on the research on physical punishment to better understand its risks and providing resources to support alternative parenting strategies.
- **Health providers, teachers, daycare and other childcare providers and social workers** should all learn how to recognize and respond to violence against children appropriately.
 - This can be promoted through professional training and development programs; and clear guidance for workers

For Parents, Families and Communities

It is critical to acknowledge the inequitable effects of policies on racial, ethnic, and other marginalized communities in the past and ensure that legal reform does not lead to greater inequities for these communities. Therefore, alternative approaches to prevention and intervention in cases of corporal punishment in these communities are essential to avoid prosecution and prevent further discrimination and harm, such as:

- Referring families to culturally appropriate community-based services
- Providing economic support to low-income families to reduce financial stress
- Efforts to promote awareness on the harms of corporal punishment
- involving Black and Indigenous community leaders in educational efforts
- Ensuring mandated reporters and law enforcement officers are educated and informed in culturally appropriate response strategies

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