

CHAPTER 10

Physical Punishment in Childhood: A Human Rights and Child Protection Issue

Ailsa M. Watkinson

How can we expect children to take human rights seriously and to help build a culture of human rights, while we adults not only persist in slapping, spanking, smacking and beating them, but actually defend doing so as being ‘for their own good’? Smacking children is not just a lesson in bad behaviour; it is a potent demonstration of contempt for the human rights of smaller, weaker people.

Thomas Hammarberg, cited in Pinheiro, 2006, p. 11

On the evening of January 10, 2008, a member of Parliament (MP) from Ontario was interviewed on the Canadian Broadcasting Corporation (CBC) program *As It Happens*. The MP, Ruby Dhalla, had been on a trip to the Punjab Region in India and, while performing an official duty, her

SUGGESTED CITATION: Watkinson, A. (2009). Physical punishment in childhood: A human rights and child protection issue. In S. McKay, D. Fuchs, & I. Brown (Eds.), *Passion for action in child and family services: Voices from the prairies* (pp. 207-226). Regina, SK: Canadian Plains Research Center.

assistant's purse was stolen. The police reacted and recovered the purse, which had been stolen by two children, five and nine years of age. The event came to public attention after a local television station in the Punjab reported that the children, when found by the police, were "beaten black and blue" (Fatah, 2008). Although the actual facts are still in dispute, the issue that is significant here is the MP's description in the CBC interview of what happened to the children. She said she had been shown "horrific pictures" of the children struggling with the police and that they had been beaten. She described this as a physical and severe "reprimand." She was asked by the interviewer what she meant by "physical reprimand," but did not answer the question directly.

If the police treated an adult in the manner described, it is unlikely that the encounter would have been depicted as a "reprimand." It would probably have been framed as an assault, a beating, or even police brutality. It is this distinction between the naming of an assault on children as a "reprimand" versus the naming of an assault on an adult as a "beating" that is central to the discussion that follows. Reprimanding a child in some non-violent way is normal to help shape positive development, but too often we view the use of physical force against children as a reprimand rather than as the assault that it is.

A recent United Nations global study on violence against children found that the magnitude of violence against children worldwide is substantial (Pinheiro, 2006). The report described the violence as a serious global problem that "occurs in every country in the world in a variety of forms and settings and is often deeply rooted in cultural, economic and social practices" (p. 6). Corporal punishment (sometimes referred to as physical punishment) is identified in the United Nations report (Pinheiro, 2006) as one of the most extensive forms of violence experienced by children. Corporal punishment is defined by the United Nations' Committee on the Rights of the Child as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light" (Pinheiro, 2006, p. 52, citing Committee on the Rights of the Child, 2006, para. 11).

According to Pinheiro (2006), only 2.4 percent of children worldwide are provided legal protection from corporal punishment in all settings, including the home and school. In Canada, all adults are provided legal protection from corporal punishment. Children are not.

The purpose of this paper is to consider the current social and legal positioning of children in Canada regarding the use of physical punishment¹ and its correlation to the intersection of child protection and children's rights. The physical punishment of children in Canada has been a topic widely discussed for decades. I will review the meaning of child maltreatment as it relates to physical punishment and physical abuse. In addition, I will discuss the first major children's rights case under the *Canadian Charter of Rights and Freedoms* that challenged the use of physical punishment on children. The case was eventually heard by the Supreme Court of Canada. Finally, I will review the Supreme Court's decision and report on findings from a study flowing from the decision. The study was conducted to determine the public's knowledge of the changes to the interpretation of the law following the Supreme Court's decision.

The findings of this study and others referred to in this paper support the need for advocacy by social workers to ensure that child protection policies and parental programming reflect Canada's international obligations to its children, namely to "explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed" (Committee on the Rights of the Child, 2003, para. 33).

CHILD MALTREATMENT AND S. 43 OF THE *CRIMINAL CODE OF CANADA*

A useful definition of child maltreatment is "the harm, or risk of harm, that a child or youth may experience while in the care of a person they trust or depend on, including a parent, sibling, other relative, teacher, caregiver or guardian" (Jack, Munn, Cheng, & MacMillan, 2006, p. 1). Child maltreatment includes: physical abuse, sexual abuse, neglect, emotional harm and exposure to family violence (Trocmé et al., 2005). Although all forms of maltreatment harm children and their development in many ways (Finkelhor, 1994; Gershoff, 2002; McGillivray & Durrant, 2006; Pinheiro, 2006), this paper will focus solely on physical abuse—the

1 Throughout the paper I will use the phrases 'physical punishment' and 'corporal punishment' interchangeably. For the purposes of this discussion they have the same meaning—"the intentional use of force to cause pain or discomfort."

only form of child maltreatment that sometimes can be legally excused.

There is an ongoing debate about the distinction between physical punishment and physical abuse. “Definitions vary, as one person’s view of what constitutes abuse—‘hitting’—is another person’s method for disciplining her or his child—‘spanking’” (Vine, Trocmé, & Findlay, 2006, p. 147). These attempts at drawing distinctions is confounded by child protection mandates, children’s human rights, and s. 43 of the *Criminal Code of Canada*.

Each Canadian province and territory has its own legislation that deals with child welfare and protection (see Centre of Excellence for Child Welfare, 2008, for summaries). In Saskatchewan, for example, the legislation is the *Child and Family Protection Act*. Legislation for each province and territory is accompanied by regulations and protocols. The common benchmark used in child physical abuse cases investigated by child protection agencies, however, is physical injury or “demonstrable harm” (Trocmé et al., 2005, p. 16), which is described as injuries such as bruises, cuts, burns, bite marks and other injuries that appear to indicate various stages of healing (Saskatchewan Provincial Child Abuse Protocol, 2006).

The latest report on child maltreatment across Canada estimated that in 2003 the child welfare system substantiated over 31,000 incidents of physical maltreatment² (Trocmé et al., 2005). As the authors point out, the estimates of child maltreatment are based on reported cases and do not include cases that were never reported, cases that were screened out before the investigation, and those cases investigated only by the police (Trocmé et al., 2005). Most cases of substantiated child physical abuse that come to the attention of child protection agencies stem from an escalation of child physical punishment (Durrant & Ensom, 2006). In fact, one of the findings arising from the 2003 *Canadian Incidence Study of Reported Child Abuse and Neglect* was that “[p]unishment accounted for 75% of substantiated incidents in which physical maltreatment was a primary category for investigation” (Durrant et al., 2006). Fifty-nine Canadian children under the age of eighteen were killed in 2003, and 31 of these children were

2 These numbers are national estimates derived from the sample used in the study. The CIS tracked 14,200 child maltreatment cases investigated by 63 Child Welfare Agencies across Canada. “Weighted national annual estimates were derived based on these investigations” (Trocmé et al., 2005, p. 1). For information on the method used, see Appendix H in Trocmé et al., 2005, p. 129.

killed by a family member (Canadian Centre for Justice Statistics, 2005).

In 1989, the United Nations adopted the *Convention on the Rights of the Child*, “which signals clearly that children are holders of human rights and acknowledges their distinct legal personality and evolving capacities” (Pinheiro, 2006, p. 33). All members of the United Nations (except the United States and Somalia) have ratified the *Convention*. The United Nations’ Committee on the Rights of the Child, established to review each country’s compliance with the *Convention*, has consistently interpreted the *Convention* to mean that corporal punishment is incompatible with its principles and goals. In 2006, it issued a special report on the issue of corporal punishment and said:

Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the Convention. It is also a key strategy for reducing and preventing all forms of violence in societies. (Committee on the Rights of the Child, 2006, para. 3)

Recently, the United Nations’ Committee on the Rights of the Child responded to Canada’s report on its compliance with the *Convention on the Rights of the Child* saying:

The Committee recommends that the State [Canada] party adopt legislation to remove the existing authorization of the use of “reasonable force” in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed. (Committee on the Rights of the Child, 2003, para. 33)

The Committee was referring to section 43 of the *Criminal Code of Canada*. This section provides parents, teachers and others charged with the care of children with a defence should they be charged with assault when they use force (physical punishment) to “correct” a child’s behaviour.

Legally, it is considered a violation of Canada’s *Criminal Code* to apply force upon another person without his or her consent—such force is considered an assault. Section 265 (1) of the *Criminal Code of Canada* states:

A person commits an assault when:

- a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs (*Criminal Code of Canada*, 1985)

However, there are times and circumstances in which using force on another person is justified, and the *Criminal Code* provides defences that can be applied to justify their actions. For example, section 37 provides a defence to persons who use force to defend themselves and others under their protection as long as the force used is no more than is necessary; section 38 provides a defence for those who use force to protect their property as long as no bodily harm is caused to the trespasser; and section 45 protects those who perform skilled and careful surgical operations for the benefit of the patient. Section 43 is another defence available to parents, teachers and others acting in their place who use force to correct a child's behaviour.³

Section 43 states:

Every school teacher, parent or person standing in the place of the parent is justified in using force by way of correction toward the 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 use of the word "force" in section 43 of the *Criminal Code* has been interpreted, in the legal context, to mean force "for the benefit of the education of the child" (*Ogg-Moss v. The Queen*, 1984, p. 132).

³ In addition, there are common law defences, those that have arisen through court decisions. One is the defence of *de minimis non curat lex* (the law does not care for small or trifling matters; see *Canadian Foundation*, para. 200). Another is the defence of necessity, which recognizes human weaknesses and the fact that at times humans may be compelled by self-preservation or that of others, see *Canadian Foundation*, para. 196.

Corporal punishment, as described earlier, is the use of physical force, “however light” which is intended to cause pain or discomfort (Pinheiro, 2006, p. 52, citing Committee on the Rights of the Child, 2006, para. 11). Corporal punishment describes many actions, including hitting with the hand or with objects such as a belt, wooden paddle, or ruler. It also includes actions that do not involve hitting but cause discomfort for the child—for example, requiring a child to remain in an uncomfortable position, kneel on hard objects, experience forced physical exertion, be isolated in a confined place, or have foul-tasting substances placed in the mouth (Durrant & Ensom, 2006).

Restraint differs from physical or corporal punishment in that the intent is not to cause pain or humiliation. It may be used to prohibit or remove a person from causing harm to himself or others. Restraint is defined variously as “physically restricting movement” (Mohr, Petti, & Mohr, 2003, p. 330) and “the application of external control, not to punish, but to protect the child or others from physical pain and harm” (Durrant & Ensom, 2006, p. 2).

Section 43 provides those who use force on children with a defence if they can show that the force was used for correction and was reasonable under the circumstances. In the first case by the Supreme Court of Canada to consider the impact of s. 43 (heard in 1984), former Chief Justice Brian Dickson of the Supreme Court wrote:

[T]he overall *effects* of that section are clear, no matter how its terms are defined. It exculpates the use of what would otherwise be criminal force by one group of persons against another. It *protects* the first group of persons, but, it should be noted, at the same time it *removes* the protection of the criminal law from the second [emphasis in the original]. (*Ogg-Moss v. The Queen*, 1984, p. 182)

Over the years, leading up to the *Charter* challenge, section 43 had been used to defend incidents of correction that stretch the boundaries of what we might consider to be “reasonable under the circumstances.” Some of the many cases that found the correction to be reasonable included a teacher who used karate chops to the face and shoulders of students (*R. v. Wetmore*, 1996), a foster mother who hit three 2-year-olds on their diapered bottoms with a belt, leaving red marks (*R. v. Atkinson*, 1994), a

father who struck his 4-year-old son—who at the time had an ear infection that eventually required medical attention—across the face leaving an imprint on his face (*R. v. Wood*, 1995), and a teacher who grabbed a 12-year-old student by the throat with both hands and “cuffed” him in the stomach (*R. v. Caouette*, 2002). In 1995, s. 43 was successfully used as a defence in a case involving allegations of child sexual abuse in which, in one incident, a stepfather ordered his twelve-year-old stepdaughter to remove her pants and underwear and lie across his knees so that he could spank her bare bottom (*R. v. W. F. M.*, 1995).

THE CHARTER CHALLENGE TO S. 43

In 1982, Canada’s *Charter of Rights and Freedoms* came into effect. It guarantees all citizens, including children, fundamental rights and freedoms, including the right to security of their person (s. 7), the right to be free from cruel and unusual punishment (s. 12), and equality rights (s. 15). In addition, in 1991 Canada became a signatory to the United Nations’ *Convention on the Rights of the Child*. The *Convention* affirms that children are endowed with inherent rights, including the right to freedom from physical punishment (Articles 3, 19, 28 & 37).

The Canadian *Charter* and the United Nations’ *Convention on the Rights of the Child* form an impressive combination in promoting the rights of children. Armed with these two powerful human rights documents, the author and others began a legal challenge to section 43, arguing that the use of physical force on children was a violation of their right to dignity and physical integrity.

Another motivating factor that influenced our decision to take the challenge forward was the overwhelming evidence of the harm caused to a child’s development and overall physical and mental well-being, even when subjected to what we might consider “mild” corporal punishment. The research was synthesized in an important meta-analysis conducted by Gershoff (2002). Gershoff reviewed all studies into the effects of corporal punishment on children conducted over 50 years. She selected 88 of those studies that focused only on mild to moderate corporal punishment, excluding all studies that looked at the outcomes of serious physical abuse. Her findings concluded that mild to moderate corporal punishment reliably predicts decreased moral internalization, increased child aggression, increased child delinquent and antisocial

behaviours, decreased quality of relationships between parent and child, poorer child mental health, increased risk for being a victim of physical abuse, increased adult aggression, increased adult criminal and antisocial behavior, poorer adult mental health, and increased risk for abusing one's own child or spouse (Gershoff, 2002). She concluded: "Corporal punishment was associated with only one desirable behaviour, namely, increased immediate compliance" (Gershoff, 2002, p. 544). Similar conclusions have been drawn from other reviews since (Grogan-Kaylor, 2004; Mulvaney & Mebert, 2007; Pinheiro, 2006).

The case of the *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* challenging the s. 43 defence was instigated by the author through the Court Challenges Program⁴ and eventually carried forward by the Canadian Foundation for Children, Youth and the Law.⁵ Our arguments were that s. 43 violated the *Charter* rights of children under three sections. First, we claimed that s. 43 infringed s. 7 of the *Charter*, which protects all citizens from invasions on their personal security, and that the infringement could not be justified within the prin-

4 The Court Challenges Program was a federal program designed to assist individuals and groups who faced no other alternative but to challenge federal laws and policies that violated their constitutional equality rights. It was a program that gained international praise through the United Nations but was dismantled by the Conservative Party of Canada in 2006. The *Canadian Foundation* case, discussed here, was often referred to by the Conservative Government as an example as to why the Court Challenges Program should be dismantled.

5 I applied for funding from the Court Challenges Program to research the constitutionality of s. 43 as it relates to the equality rights of children. Consequently, I was successful in obtaining \$45,000 to challenge this section. However, I could not take the case forward on my own and was required to find an organization that had a history of working with children and youth and experience in equality rights cases. I selected the Canadian Foundation for Children Youth and the Law, an Ontario-based organization, since there was no other organization that I knew of with a history in both areas. In fact, they had tried twice to intervene at the Supreme Court level on cases involving the physical punishment of children so as to challenge the constitutionality of s. 43. The cases were *R. v. Halcrow*, (1993), 24 British Columbia Appeal Cases (affirmed on appeal to the Supreme Court: [1995] 1 Supreme Court Reports, 440) and *R. v. K.(M.)* (1992), 16 Criminal Reports (4th) 122 (due to the death of the defendant, the Supreme Court did not hear the case).

ciples of fundamental justice.⁶ We also argued that s. 43 violated a child's rights under s. 12, which prohibits cruel and unusual treatment.⁷ Finally, we argued that s. 43 is contrary to the equality rights proclaimed under s. 15, which protect all citizens from inequality in law and in the protection afforded by law.⁸

The majority of the Supreme Court judges sided with the Government of Canada, the Canadian Teachers' Federation and the Coalition for Family Autonomy⁹ and found that, although the defence available to parents and teachers under s. 43 violates a child's "security of the person" rights under s. 7, it is not done in contravention of the principles of fundamental justice. They found that s. 12 of the *Charter* was not offended by s. 43 since s. 12 applies to the actions of governments and their agents—not to parents. Since teachers are considered agents of the state, the Court ruled that s. 12 did not apply, as the only force teachers could use on students was force that was not, according to the standard they had just constructed, "cruel and unusual" (Watkinson, 2006; Watkinson, in press).

Finally, the Court found that s. 43 did not constitute discrimination against children. They acknowledged that s. 43 "permits conduct toward children that would be criminal in the case of adult victims" (para. 50), but the distinction on the basis of age is, they said, designed to protect children by not criminalizing their parents and teachers. Chief Justice McLachlin, writing for the majority said:

6 Section 7 states: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

7 Section 12 states: Everyone has the right not to be subjected to cruel and unusual treatment or punishment.

8 Section 15 (1) states: Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

9 The Coalition is made up of Focus on the Family (Canada) Association, Canada Family Action Coalition, the Home School Legal Defence Association of Canada, and REAL (Realistic, Equal and Active for Life) Women of Canada.

The decision not to criminalize such conduct [the physical punishment of children] is not grounded in devaluation of the child, but in a concern that to do so risks ruining lives and breaking up families—a burden that in large part would be borne by children and outweigh any benefit derived from applying the criminal process. (para. 62)

Although the Court was not prepared to find s. 43 a violation of a child's *Charter* rights, it did limit significantly the scope of s. 43. Chief Justice McLachlin of the Supreme Court stated that Section 43 "exempts from criminal sanction only minor corrective force of a transitory and trifling nature" (para. 40). Further, its use can only be considered "reasonable" and used as a defence in cases when corporal punishment is used "for educative or corrective purposes" (para. 24) and when the "non-consensual application of force results neither in harm nor in the prospect of bodily harm. This limits its operation to the mildest forms of assault" (para. 30).

The Court expanded on the limitations, specifically listing the following actions that will not be considered "reasonable" under s. 43, and thus s. 43 would not be available as a defence to parents, teachers or others acting in their place. These actions enter what the Court called a "zone of risk." The "zone of risk" includes using corporal punishment on children under two years of age, because they do not have the capacity to understand "why they are hit" (para. 25 & 40). Also, a child with a "disability or some other contextual factor" will not be capable of learning from the application of force (para. 25). The Court said, "[I]n these cases, force will not be 'corrective' and will not fall within the sphere of immunity provided by s. 43" (para. 25), since children must be capable of learning and have the capacity to successfully correct their behaviour (para. 25). Corporal punishment is not to be used on teenagers, as it can induce aggressive or antisocial behaviour (para. 37, 40). Corporal punishment cannot be justified under s. 43 when an object or weapon is used, such as a ruler or belt (para. 37 & 40), in cases involving slaps or blows to the head (para. 37 & 40), when the force is "degrading, inhuman or harmful conduct" (para. 40), when it is applied in anger stemming from "frustration, loss of temper or abusive personality" (para. 40), or when it is used by teachers (para. 38 & 40).

The impact of the decision was that actions considered by some to be

normal child-rearing practices one day, such as slapping a thirteen-year-old or using a wooden spoon to spank a 4-year-old, were considered criminal the next day.

STUDY ON ADULT KNOWLEDGE AND NEEDS

Eighteen months after the Supreme Court issued its decision, the author conducted research into the public's knowledge of the case to determine:

- a) The degree to which the participants know and understand the limits placed on them.
- b) Whether the limits on the use of corporal punishment interfere with the participants' cultural, religious or other traditional values or beliefs.
- c) What participants thought parents need in order to abide by the limits placed on their use of corporal punishment.

Method

The study involved four focus groups held in rural and urban settings. The first group consisted of nine university students in a northern urban centre, the second group consisted of seven rural mothers, the third consisted of ten urban mothers, and the fourth group consisted of eight mothers who were recent immigrants to Canada. Two participants were male. Forty-seven percent of participants were members of cultural minority groups: six identified themselves as Aboriginal, five as Afghani, four as Asian Canadian, and one as African Canadian. Seventy-four percent described themselves as being associated with some religious/spiritual group: six were Catholic, eight Protestant, four Traditional Spiritual, four Muslim, two New Age, and one Hindu. Six of the participants were not parents.

First, each focus group member was given a questionnaire to complete. The questionnaire gathered demographic information on the age, sex, cultural and religious backgrounds of the participants, where they lived and the number and ages of their children. The questionnaire then asked participants questions concerning the Supreme Court decision in order to determine their familiarity with it. They were asked if they were aware of the Supreme Court of Canada's decision on the use of physical punishment (spanking) of children and, if so, to list any of the changes to the law on spanking that they knew about such as: changes with regard

to the ages of children who may be physically punished or where on the child's body physical punishment could be applied?¹⁰ Finally, if they were aware of the changes to the law, they were asked how they found out about them. Suggestions were provided, such as through the newspaper, radio, television and so on. If English was not the first language of participants, the group facilitators or other group participants read the questions to them and recorded their responses.

The principal researcher then described the Supreme Court decision and the manner in which it limited the scope of s. 43. This process provided information to the participants about the decision in a relaxed and non-threatening way. Following this discussion, participants were asked to answer, in writing, whether the decision interfered in any way with their religious, cultural or traditional beliefs. Then a discussion was held to discuss, first, the implications of the decision on their religious, cultural or traditional beliefs and, second, what the participants felt they needed in order to comply with the limitations placed on parental physical punishment of children. The discussion was audiotaped and transcribed.

Findings

Only 12 of the 34 participants (33.3%) said they were aware of the Supreme Court's decision limiting the defence for parents who use physical punishment on children. There was no discernable difference between rural and urban participants in this regard: 3 of the 8 rural participants (37%) and 9 of the 26 urban participants (35%) were aware of the Supreme Courts decision.

Twenty-two of the participants (65%) could not provide any correct information about how the law regarding the physical punishment of children had changed. Of the 12 who answered "yes" to the question—"Are you aware of the Supreme Court's decision on the use of physical punishment?"—only 5 (41.7% of that group; 14.7% of the total sample) had any correct information on the changes. Of the three rural participants who said they knew about the decision, two could not recall any specifics. They responded with comments such as, "I don't know," or "I don't really remember—kind of vague." Of the urban participants, four

10 The question was: "Please list any of the changes to the law on spanking that you know about. For example, were there changes in regards to the age of a child; where on the child's body physical punishment can be applied, etc?"

out of nine provided some correct information. Thus, a minority of participants said they knew of the decision, and few (5 of 34) could partially explain the decision, and even then only in a very limited way. For example, one of the five knew that physical punishment could not be used in anger and that only an open hand could be used to apply physical force on a child. Another knew that parents may not hit a child on the head and that physical force on a toddler was prohibited, but nothing more.

Among the other seven participants who said that they knew about the decision, one said that only mild force could be used (which is correct) but thought it could be used only on children under five years of age (it is limited to children between 2 and 12 years of age); four gave incorrect information, such as saying the court ruled it was permissible to hit a child on the face; two thought the Court had said there was to be no hitting of children at all. Another participant, a recent immigrant to Canada who was not aware of the Supreme Court's decision and therefore could not provide any examples of how the law had changed, reported being told by Immigration authorities that children cannot be spanked in Canada.

Participants were asked whether the Court's limits on the use of physical punishment interfered in any way with their cultural, religious or other traditional values or beliefs. This question was asked in response to concerns that any changes to the law concerning the physical punishment of children could be seen as violating the religious, cultural or traditional practices of parents. The Old Testament is often relied upon to justify the use of corporal punishment on children (for example, Proverbs 22:1) and researchers have found that members of Conservative Protestant denominations support corporal punishment more strongly than others (Bottoms, Shaver, Goodman, & Qin, 1995; Ellison, Bartkowski, & Segal, 1996). As well, other research has found strong support for the use of corporal punishment within certain cultural groups (Fontes, 2005).

Although 47 percent of participants were members of cultural minority groups, and 74 percent described themselves as being associated with some religious/spiritual group, none of the participants found that the limitations interfered with any religious, cultural, or other traditional values or beliefs. Nor were any concerns raised by the participants regarding how the law has changed. In fact, three of the participants believed the law had always prohibited the use of physical punishment on children.

What do parents need?

The participants discussed what they thought parents need in order to abide by the changes to the law. The most common theme was parental support. The participants talked, in some cases, very freely about the frustration they feel when dealing with their children. One participant described the frustration as being “on my last nerve I really think there is a need for support and I’m not exactly sure where it’s supposed to come from when you’re on your last nerve.” There was an identified need for respite for parents “just to sit for a moment.” Some suggested a drop-off centre for kids to go to so as to allow time for the parent to “de-stress.” The establishment of such a facility would acknowledge that others share the frustrations and intensities of child rearing and “you wouldn’t feel so alone.” However, others worried that if they took part in such a service it might “red flag” them. There was the fear that by asking for help you are drawing attention to a weakness. One parent said, “That fear is there. We know we need this extra support in being able to parent our children in a wonderful, healthy way. But that stigma is out there and it makes us fearful to ask for the help that we know we need.”

Another common theme was the need for parenting classes. The suggestions included ensuring that parenting classes be held at various times throughout the day so that they are available to working parents as well as to non-working parents, that parenting skills be front and centre in school curricula from grades K-12, and that the health system, the one common denominator in the lives of children and their parents, take the lead in the dissemination of information on healthy child-rearing practices.

Many of the mothers discussed the need to be recognized for the work they do. One group discussed the idea of monetary compensation for parents. Others seemed satisfied with any recognition of the importance and stress associated with the work they do in raising small children. Each focus group raised the need for more public education on physical punishment and its impact, as well as on the Supreme Court’s decision.

DISCUSSION OF FINDINGS

Eighteen months after the Supreme Court decision, which brought about important changes to the law defining “reasonable force” with children, only 15 percent of this sample could provide accurate information on

even some of these changes. Their lack of knowledge not only places them at risk for prosecution if they use force that is no longer considered reasonable; it also places their children at risk for assault because the law cannot have its intended inhibitory effect on parents' behaviour if parents do not know about it. Perhaps most worrisome is the fact that not one participant knew that the degree of force used may not exceed what is deemed transitory and trifling.¹¹ So, even those few parents who know that they can only hit with their hands do not know that they can only cause minor discomfort to the child.

Overall, the focus groups highlighted the role of stress in the interaction between parent and child. Its manifestations could be mitigated by providing a "time out" for parents, parenting classes, more recognition of their contribution, including pay, and the need for public education on all of these issues, including the direction arising from the Supreme Court decision.

Supporting and extending this research

Toronto Public Health conducted a structured national survey between January and March 2006, exploring Canadians' knowledge of the Supreme Court's decision on the use of physical punishment of children (Toronto Public Health, 2007). The study was conducted through telephone interviews of 2,451 respondents over the age of 18. The findings were consistent with those found in the study reported upon here. For example, two-thirds of the respondents were not aware of the Supreme Court's decision and, of those who were aware of the decision, "less than one in five knew the legal limitations placed on its use by the Supreme Court" (p. 1). One of the most startling findings in the Toronto Public Health study was the fact that those who were aware of the Supreme Court decision, compared to those who were not, were "more likely to believe that parents are allowed to physically punish their children and less likely to feel unsure that this is allowed" (Toronto Public Health, 2007, p. 9). The study concludes that "the law is ineffective in protecting children in the way the Court had intended, and it also places caregivers at risk of prosecution for acts that they do not know are criminal offences" (p. 11).

11 The Court did not define "transitory and trifling"; however, the phrase is found in the Criminal Code of Canada.

Children in Canada are not fully protected from physical punishment, and neither are their parents protected from prosecution. The 2004 Supreme Court decision limited the use of physical punishment based on the severity, age and location on the child's body, but it did not prohibit it outright. In fact, by focusing on the form of physical punishment used rather than its use *per se*, the Court gave its implicit approval to the use of physical punishment on children, thereby maintaining, rather than reducing, the likelihood of physical violence against children (Durrant, Covell, McGillivray, Watkinson, & McNeil, 2008). In so doing, the Court reinforced the idea that physical punishment of children is a normative act.

In a recent study on the intergenerational transmission of approval of physical punishment, the authors found that the best predictor of approval is one's belief that it is normative (Durrant et al., 2008). This variable was a better predictor than the frequency and severity of physical punishment experienced in childhood, the emotional impact of one's experiences of physical punishment over the short and long terms, and the disciplinary context (inductive, power assertive, emotionally abusive or emotionally supportive) in which one's experiences of physical punishment took place. Therefore, the Supreme Court lost an opportunity to decrease approval of physical punishment, which is the most powerful predictor of its use (Durrant et al., 2008) by re-defining physical punishment as an assault, rather than as a normative act.

SUGGESTED SOLUTIONS

With this in mind, it is important to consider means to interrupt the "normativeness" of physical punishment. Such interruptions may include alternatives in legislation, education, and parental supports that mirror the rights of children as stated in the *Convention on the Rights of the Child*.

For example, Canada could follow the lead of more than twenty countries that prohibit all physical punishment of children, no matter how light,¹² to send a clear message that physical punishment is no longer

12 The countries that have prohibited all corporal punishment of children are: Costa Rica (2008); Spain (2007); Chile (2007); Venezuela (2007); Uruguay (2007); Portugal (2007); New Zealand (2007); Netherlands (2007); Greece (2006); Hungary (2005); Romania (2004); Ukraine (2004); Iceland (2003); Germany (2000); Israel (2000); Bulgaria (2000); Croatia (1999); Latvia (1998); Denmark (1997); Cyprus (1994); Austria (1989); Norway (1987); Finland (1983); and Sweden (1979).

the “norm.” Many of the countries that have prohibited all use of physical punishment have replaced their legislation with positive statements about the entitlements of children to care and a loving environment. For example, Sweden enacted the following law in 1979:

Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment. (*Parenthood and Guardianship Code, 1983*, cited in Durrant & Ensom, 2006, p. 24)

We could also amend all provincial and territorial child protection legislation so that the need for evidence of “demonstrable harm” is removed and instead is replaced with an assurance that all forms of physical punishment, “however light,” are prohibited.

Other strategies for reducing the perceived normativeness of physical punishment, and thus preventing the physical and emotional harm it can engender (Gershoff, 2002), include undertaking educational initiatives on the rights of children that are geared to children themselves, their families, and others who work with children; amending education acts to reflect every student’s positive entitlement to respect and dignity; supporting parents in adopting positive disciplinary approaches; and providing parental respite. Finally, we need to take a stand as professional organizations and Faculties of Social Work in supporting and promoting initiatives that affirm children’s inherent rights and dignity, and work together to end the most common—but least visible—form of violence against children.

REFERENCES

- Bottoms, B. L., Shaver, P. R., Goodman, G. S., & Qin, J. (1995). In the name of God: A profile of religion-related child abuse. *Journal of Social Issues, 51*, 85-111.
- Canadian Centre for Justice Statistics. (2005). *Family violence in Canada: A statistical profile 2005*. Ottawa, ON: Statistics Canada. Cat. No. 85-224-XIE, 2005.
- Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* [2004] S.C.R. 76.
- Centre of Excellence for Child Welfare. (2008). *CECW information sheets*. Retrieved April 14, 2008, from http://www.cecw-cepb.ca/pubs/infosheets_e.html

- Committee on the Rights of the Child (27 October 2003). Concluding observations of the Committee on the Rights of the Child: CANADA, CRC/C15/Add.215.
- 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 (articles 19, 28(2) and 37, inter alia), CRC/C/GC/8.
- Convention on the Rights of the Child*. (1989). U.N. Doc. A/RES/44/25 (1989). Retrieved May 8, 2008, from <http://www.unhcr.ch/html/menu3/b/k2crc.htm>
- Criminal Code of Canada*, R.S.C. 1985, c. C-46.
- Durrant, J. E., Covell, K., McGillivray, A., Watkinson, A. M., & McNeil, J. (2008). "It didn't do me any harm": Explaining the intergenerational transmission of approval of child physical punishment. Department of Family Studies, Faculty of Human Ecology, University of Manitoba, Winnipeg, MB. Manuscript submitted for publication.
- Durrant, J. E., & Ensom, R. (2006). *Joint statement on physical punishment of children and youth*. Ottawa, ON: Coalition on the Physical Punishment of Children and Youth.
- Durrant, J. E., Trocmé, N., Fallon, B., Milne, C., Black, T., & Knoke, D. (2006). Punitive violence against children in Canada. Centre of Excellence for Child Welfare. Retrieved May 8, 2008, from <http://www.cecw-cepb.ca/files/file/en/PunitiveViolence41E.pdf>
- Ellison, C. G., Bartkowski, J. P., & Segal, M. L. (1996). Conservative Protestantism and the parental use of corporal punishment. *Social Forces*, 74(3), 1003.
- Fatah, N. (Producer). (2008, January 10). *As It Happens* [Radio Broadcast]. Toronto, ON: Canadian Broadcasting Corporation.
- Finkelhor, D. (1994). Children as victims of violence: A national survey. *Pediatrics*, 94, 413-420.
- Fontes, L. A. (2005). *Child abuse and culture: Working with diverse families*. New York: The Guilford Press.
- Gershoff, E. T. (2002). Corporal punishment by parents and associated child behaviours and experiences: A meta-analytic and theoretical review. *Psychological Bulletin*, 128(4), 539-579.
- Grogan-Kaylor, A. (2004). The effect of corporal punishment on antisocial behavior in children. *Social Work Research*, 28(3), 153-162.
- Jack, S., Munn, C., Cheng, C., & MacMillan, H. M. (2006). *Child maltreatment in Canada: Overview paper*. Ottawa, ON: National Clearinghouse on Family Violence, Public Health Agency of Canada.

- McGillivray, A., & Durrant, J. E. (2006). Child corporal punishment: Violence, law, and rights. In R. Alaggia & C. Vine (Eds.), *Cruel but not unusual: Violence in Canadian families* (pp. 177-200). Waterloo, ON: Wilfred Laurier University Press.
- Mohr, W. K., Petti, T. A., & Mohr, B. D. (2003). Adverse effects associated with physical restraint. *Canadian Journal of Psychiatry*, 48(5), 330-337.
- Mulvaney, M. K., & Mebert, C. J. (2007). Parental corporal punishment predicts behaviour problems in early childhood. *Journal of Family Psychology*, 21(3), 389-397.
- Ogg-Moss v. The Queen*, [1984] 2 S.C.R., 173.
- Pinheiro, P. S. (2006). *World report on violence against children*. Geneva: United Nations Secretary General's Study on Violence against Children.
- R. v. Atkinson*, [1994] W.W.R. 485 (Manitoba Provincial Court).
- R. v. Caouette*, [2002] Q.J. No 1055 (Quebec Criminal Court).
- R. v. W. F. M.* (1995), 169 A.R. 222 (Court of Appeal).
- R. v. Wetmore*, (1996). 172 N.B.R. (2d) 224 (Queen's Bench).
- R. v. Wood* (1995), 176 A.R. 223 (Provincial Court).
- Saskatchewan Provincial Child Abuse Protocol. (2006). Retrieved May 9, 2008, from <http://www.socialservices.gov.sk.ca/child-abuse-protocol.pdf>
- Toronto Public Health. (March 2007). *National survey of Canadians' knowledge of the law on physical punishment of children (Section 43 of the Criminal Code of Canada)*. Retrieved May 8, 2008, from http://www.toronto.ca/health/ssl_index.htm
- Trocmé, N., Fallon, B., MacLaurin, B., Daciuk, J., Felstiner, C., Black, T. (2005). *Canadian incidence study of reported child abuse and neglect – 2003: Major findings*. Ottawa, ON: Minister of Public Works and Government Services Canada.
- Vine, C., Trocmé, N., & Findlay, J. (2006). Children abused, neglected, and living with violence. In R. Alaggia & C. Vine (Eds.), *Cruel but not unusual: Violence in Canadian families* (pp. 147-176). Waterloo: Wilfred Laurier University Press.
- Watkinson, A. M. (2006). Supreme Court of Canada stands behind corporal punishment—sort of *International Social Work Journal* 49(4), 531-536.
- Watkinson, A. M. (in press). Corporal punishment and education: Oh Canada! Spare us! In M. Manley-Casimir & K. Manley-Casimir (Eds.), *The courts, the charter and the schools: The impact of the Charter of Rights and Freedoms on educational policy and practice, 1982-2007*. Toronto, ON: University of Toronto Press.