

**BRIEFING ON CANADA FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, PRE-SESSIONAL WORKING GROUP
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**This briefing describes the legality of corporal punishment of children in Canada. In light of the obligation under international human rights law to prohibit all corporal punishment of children, the recommendations of the UN Secretary General’s Study on Violence against Children, the recommendations made to Canada by the Committee on the Rights of the Child (in 2012, 2003 and 1995) and during the Universal Periodic Review (in 2013), we hope the Committee on Economic, Social and Cultural Rights will:**

* **in its List of Issues for Canada, raise the issue of corporal punishment, in particular asking what steps are being taken to ensure that legislation is enacted which prohibits all corporal punishment of children and explicitly repeals section 43 of the Criminal Code which allows for the use of force “by way of correction”?**
* **in its concluding observations on Canada’s sixth report, recommend that legislation is drafted and enacted to explicitly repeal section 43 of the Criminal Code, which allows the use of force “by way of correction”, and to clearly prohibit all corporal punishment of children in all settings.**

**1 Canada’s report to the Committee on Economic, Social and Cultural Rights**

* 1. Canada’s sixth report to the Committee on Economic, Social and Cultural Rights contains extensive information on measures to address family violence, which it identifies as a key issue.[[1]](#footnote-1) The information includes a description of reforms to the Criminal Code.[[2]](#footnote-2) But there is no acknowledgement of the violence in the family to which children can lawfully be subjected under section 43 of the Criminal Code, which provides for the use of force “by way of correction”. Nor is there any mention of the repeated attempts by child rights advocates to achieve the repeal of this provision.[[3]](#footnote-3)
	2. We hope the Committee will raise the issue in its examination of Canada, welcoming the Government’s attention to family violence but emphasising that so long as the law condones violent punishment of children, the pursuit of violence-free families will be undermined and unfounded by law. **We hope the Committee will recommend to Canada that legislation is drafted and enacted to explicitly repeal section 43 of the Criminal Code, which allows the use of force “by way of correction”, and to clearly prohibit all corporal punishment of children in all settings.**

**2 The legality and practice of corporal punishment of children in Canada**

2.1 ***Summary:*** In Canada, corporal punishment of children is unlawful in the penal system; it is unlawful in schools by virtue of a Supreme Court ruling but this is not reflected in legislation throughout the state party. The law prohibits corporal punishment in some alternative care settings and some day care, but in others and in the family home corporal punishment is lawful under section 43 of the Criminal Code, which allows the use of force “by way of correction”.

2.2 ***Home (lawful):***Section 43 of the Criminal Code (“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]](#footnote-4)

2.3 In Quebec, reference to a “right of correction” was removed from the Civil Code in 1994, and a number of rulings have stated that the right of correction is no longer recognised in Quebec’s civil law, but section 43 of the federal Criminal Code applies nevertheless.

2.4 Numerous bills which would repeal section 43 of the Criminal Code, most recently Senate Bill S-206, introduced in the Senate in 2013, but none successfully.

2.5 ***Alternative care settings (partially prohibited):***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 Colombia and Manitoba. In Ontario, it is prohibited in provincially-licensed childcare programmes and foster homes, and for all children receiving services from a child protection agency or other service provider licensed or approved by the province.

2.6 ***Day care (partially prohibited):*** 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 (see above, para. 2.3).

2.7 ***Schools (unlawful):*** The 2004 Supreme Court judgement (see under above, para. 2.2) 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 (1973), New Brunswick (1990), Newfoundland (1997), Northwest Territories (1995), Nova Scotia (1989), Nunavut (1995), Prince Edward Island (1993), Quebec (1997), Saskatchewan (2005), Yukon (1990) and Ontario (2009). There is no legal prohibition in Alberta and Manitoba, though policy in many school boards states that corporal punishment should not be used.

2.8 ***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.

2.9 ***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 and during the UPR**

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,[[5]](#footnote-5) on the second report in 2003[[6]](#footnote-6) and on the third/fourth report in 2012.[[7]](#footnote-7)

3.2 ***UPR:*** During the Universal Periodic Review of Canada in 2013, the Government rejected the recommendation to criminalise corporal punishment of children, defending the legal provision of a defence “in cases where minor corrective force of a transitory or trifling nature is used”.[[8]](#footnote-8)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. 23 April 2013, E/C.12/CAN/6, Sixth state party report, paras. 43-46 ,100-102, 168-174, 205-211, 292-299, 356-358, 428, 470-475, 503-507, 553, 579-581 and 634-637 [↑](#footnote-ref-1)
2. ibid., para. 45 [↑](#footnote-ref-2)
3. For example, see the website of the Repeal 43 Committee, [www.repeal43.org](http://www.repeal43.org) [↑](#footnote-ref-3)
4. *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, file no. 29113 [↑](#footnote-ref-4)
5. 20 June 1995, CRC/C/15/Add.37, Concluding observations on initial report, paras. 14 and 25 [↑](#footnote-ref-5)
6. 27 October 2003, CRC/C/15/Add.215, Concluding observations on second report, paras. 4, 5, 32, 33 and 45 [↑](#footnote-ref-6)
7. 6 December 2012, CRC/C/CAN/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8, 44 and 45 [↑](#footnote-ref-7)
8. 17 September 2013, A/HRC/24/11/Add.1, Report of the working group: Addendum, para. 24 [↑](#footnote-ref-8)