

The Place of Corporal Discipline in Canada

A Submission from the Association for Reformed Political Action (ARPA) Canada

to

the Senate Standing Committee on Legal and Constitutional Affairs

regarding

Bill S-251, *An Act to repeal section 43 of the Criminal Code (Truth and Reconciliation Commission of Canada's call to action number 6)*

September 29, 2023

“[Parliament’s] decision not to criminalize [corporal discipline] ... 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”

– Chief Justice Beverley McLachlin, Supreme Court of Canada in *Canadian Foundation for Children, Youth and the Law v. Canada (A.G.)*

Over the past two decades, legislators have debated multiple bills seeking to ban corporal discipline. We thank this Committee for the opportunity to provide a written brief as you study yet another bill on this subject, Bill S-251. If Bill S-251 passes as written, the costs and burden borne by children and families will far outweigh the purported benefits of the bill. We urge the Committee to consider the following as you work to improve the bill:

- Much of the research used to justify banning corporal discipline has major methodological flaws.
- Repealing section 43 would have demonstrably greater harms than benefits for Canadian children and their parents.
- Employing a multicultural lens to the impact of this bill on Canadian families is essential.

- Families in other jurisdictions that have criminalized corporal discipline have suffered profound harms.
- The unique role and responsibilities of parents in the lives of their children must be considered and protected, for the sake of the child.

Challenges with Corporal Discipline Research

Many studies on corporal discipline have three common problems.

First, many studies simply assume that corporal discipline causes aggressive behaviour in children based on a correlation.¹ But it could be that aggressive children were disciplined more often *because they were more aggressive*, rather than the reverse.² This same reasoning would make other disciplinary methods – such as privilege removal, timeouts, grounding, or verbal reprimands – seem ineffective or harmful as well.³

Second, some studies compare high rates of spanking (e.g. more than 4 times per week) with no spanking within the same time period. Both spanking and antisocial behavior in a particular family have been found to be above average at some times and below average at other times. Instead of comparing high rates of spanking with no spanking in a particular time period, the studies should identify frequency of spanking over a longer period and clarify what behavioural problem the parent is using spanking to address. Additionally, some studies fail to demonstrate that alternative discipline methods are more effective than corporal discipline in correcting specific behavioural problems.⁴

¹ See, for example, Anja Heilmann et al., "[Physical punishment and its outcomes for children](#): a narrative review of prospective studies," *The Lancet* 398, no. 10297 (June 28, 2021): 3.

² Robert E. Larzelere et al., "[The Outcomes of Physical Punishment are Typical of All Corrective Actions](#): A Response to Heilmann et al.'s (2021) Narrative Review," (Jan. 2022). See also Elizabeth T. Gershoff and Andrew Grogan-Kaylor, "[Spanking and child outcomes](#): Old controversies and new meta-analyses," *Journal of Family Psychology* 30, no. 4, (June 2016): 455, 464, where the authors admit that in 72% of studies causal links cannot be established. In the remaining 28% of studies, they recognize that the association between spanking and subsequent aggressing in children could have occurred because previous defiance elicited more frequent spanking.

³ Larzelere et al., "[Longitudinal biases against corrective actions](#)," *Archives of Scientific Psychology* 6, no. 1 (2018). See also Robert E. Larzelere et al., "[The Insufficiency of the Evidence Used to Categorically Oppose Spanking and Its Implications for Families and Psychological Science](#): Comment on Gershoff et al. (2018)," *American Psychologist* 74, no. 4 (2019). See also Robert E. Larzelere and Jason Fuller, "[Scientific Evidence Supports Customary and Backup \(Conditional\) Spanking by Parents](#): Update of Larzelere and Baumrind (2010) and Fuller (2009)," (Oct. 25, 2019): 3-5.

⁴ Robert E. Larzelere et al., "[The Outcomes of Physical Punishment are Typical of All Corrective Actions](#): A Response to Heilmann et al.'s (2021) Narrative Review," (Jan. 2022). ; Larzelere et al., "[Children and Parents Deserve Better Parental Discipline Research](#): Critiquing the Evidence for Exclusively "Positive" Parenting," *Marriage and Family Review* 53, no. 1 (2017): 29. See also Joshua Pritsker, "[Spanking and externalizing problems](#): Examining within-subject associations," *Child Development* 92, no. 6 (Nov. 2021).

Finally, some research fails to distinguish between harsh physical punishment and the controlled discipline allowed by Canadian law.⁵ Not all physical discipline is the same, and conclusions about the outcomes of different types of punishment should not be applied across categories.

Positive Effects of Corporal Discipline

One literature review that compared physical discipline with alternative methods found that “conditional spanking was more strongly associated with reductions in noncompliance or antisocial behaviour than 10 of 13 alternate disciplinary tactics.”⁶ When the positive effects of conditional spanking are considered, some studies show it to be as good as, or better than, most other disciplinary tactics such as reasoning, verbal prohibition, or privilege removal.

Both developmental and clinical psychology show that negative disciplinary measures are sometimes necessary.⁷ Children need authoritative parental guidance and clearly enforced rules of conduct because their reasoning is not yet fully developed. They do not know what will help or hurt them and may make choices based solely on their desires. Clear boundaries are necessary to protect children from impulsivity, short-sightedness, and inexperience. For example, a toddler reaching for a hot stove might be verbally encouraged not to touch the stove, or his parents might flick the child’s hand so that he knows that touching a stove can be very painful. Such parental discipline may not be pleasant for the child but ultimately teaches him what is best for him and probably saves the toddler from excruciating pain later.

Before criminalizing corporal discipline, law makers should have strong evidence to demonstrate that it is significantly less effective than alternative discipline methods.⁸ Supporters of bans on corporal discipline fail to provide such evidence.

The Family Context – Multicultural Considerations

The effects of corporal discipline vary by parent-child context. Some studies indicate that spanking is not harmful if children perceive it appropriately as motivated by love or as part of a consistent parenting strategy.⁹ Certain communities would be severely impacted by a ban on all

⁵ For example, Tracie O. Affi et al., “[The relationships between harsh physical punishment and child maltreatment in childhood and intimate partner violence in adulthood](#),” *BMC Public Health* 17, no. 1 (2017).

⁶ Robert E. Larzelere and Brett R. Kuhn, “[Comparing child outcomes of physical punishment and alternative disciplinary tactics](#): a meta-analysis,” *Clinical Child and Family Psychology Review* 8, no. 1 (March 2005): 26.

⁷ Larzelere et al., “[Children and Parents Deserve Better Parental Discipline Research](#): Critiquing the Evidence for Exclusively “Positive” Parenting,” *Marriage and Family Review* 53, no. 1 (2017): 25. See also Robert E. Larzelere et al., “[Causal Evidence for Exclusively Positive Parenting and for Timeout](#): Rejoinder to Holden, Grogan-Kaylor, Durrant, and Gershoff (2017),” *Marriage & Family Review* 56, no. 4 (Feb. 2020), where the authors document the strong effectiveness of timeout as a response to defiance in young children in response to criticism of this conclusion.

⁸ Robert E. Larzelere et al., “[The Outcomes of Physical Punishment are Typical of All Corrective Actions](#): A Response to Heilmann et al.’s (2021) Narrative Review,” (Jan. 2022).; Robert E. Larzelere, Taren Swindle, and Byron R. Johnson, “[Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010](#),” *International Journal of Criminology and Sociology* 2 (May 2013): 135.

⁹ Richard J. Petts and Ashleigh E. Kysar-Moon, “[Child Discipline and Conservative Protestantism](#): Why the Relationship Between Corporal Punishment and Child Behavior Problems May Vary by Religious Context,” *Review of Religious Research* 54, no. 4 (Dec. 2012): 450.

physical discipline. A study of American pediatricians indicated that black pediatricians often had more positive attitudes towards spanking and expected more positive outcomes as a result. Many black pediatricians were also concerned about the negative effects a ban on corporal discipline would have on their communities.¹⁰ A 2015 survey in the United States revealed that one-third of black parents spank their children at least some of the time, compared to 14% of white parents and 19% of Hispanic parents.¹¹ A recent study of African American families found that physical discipline, if and when used, was reserved for defiant behavior and contingent on the child's age and the disciplinary context.¹² This indicates an alignment with the limitations on discipline set out by the Supreme Court of Canada.

Additionally, even in studies that appear to find a general negative correlation between corporal punishment and children's behaviour, religious families within the data set typically have a lower likelihood of negative outcomes related to spanking. This may be due to the fact that religious parents are using corporal discipline deliberately and thoughtfully, with a specific set of guidelines for when and how corporal punishment is used, and as part of a consistent parenting strategy that children are more likely to understand.¹³ Another study concludes, "in contrast to their counterparts from other (or no) religious backgrounds, children whose mothers belonged to conservative Protestant groups exhibited minimal adverse effects of corporal punishment."¹⁴ This research indicates that parents may choose to raise their children differently, and positive or negative effects may also be dependent on the family context.

International Evidence Shows Children Suffer More Harm than Good from Spanking Ban

Sweden is often heralded as an example of the effectiveness of banning corporal discipline. However, Swedish psychiatrist David Eberhard argues that Sweden's spanking ban has led to parents being less willing to discipline their children and make decisions for them and that kids have become the key decision-makers in families.¹⁵ Swedish parents are increasingly reluctant to impose any disciplinary consequences, undermining important disciplinary methods for defiant children.¹⁶ Since banning corporal discipline, the rates of assaults of minors in Sweden have *increased* dramatically. Criminal statistics from 2010 show 22 times as many cases of physical child abuse, 24 times as many assaults against minors by minors, and 73 times as many rapes of

¹⁰ Catherine A. Taylor et al., "[US Pediatricians' Attitudes, Beliefs, and Perceived Injunctive Norms About Spanking](#)," *Journal of developmental and behavioral pediatrics* 39, no. 7 (Sept. 2018).

¹¹ "[Parenting approaches and concerns](#)," *Pew Research Center*, Dec. 17, 2015.

¹² Carla Adkison-Johnson, *Child discipline in African American families: Culturally responsive policies* (Lanham, MD: Lexington Books, 2021).

¹³ Petts and Kysar-Moon, "Child Discipline and Conservative Protestantism," 464.

¹⁴ Christopher G. Ellison, Marc A. Musick, and George W. Holden, "[Does Conservative Protestantism Moderate the Association Between Corporal Punishment and Child Outcomes?](#)" *Journal of Marriage and Family* 73, no. 5 (Oct. 2011): 946. While this study concluded that corporal punishment is harmful overall, the authors admit that there is no distinction made in the study between harsh or abusive childrearing practices and mild to moderate corporal punishment.

¹⁵ Phillip Oconnor, "[Was Sweden right to spare the rod?](#) A new book has attacked the 1979 decision to ban smacking," *Independent*, Oct. 31, 2013.

¹⁶ Larzelere et al., "Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010," 135.

minors under the age of fifteen compared with the same statistics in 1981.¹⁷ The consistency and magnitude of these increases suggests the need for a more rigorous evaluation of Sweden's ban.

One study found that Swedish parents were more likely than American parents to resort to physical restraint and coercive verbal control instead of reasoning and other behaviour modification techniques.¹⁸ Robert Larzelere and Diana Baumrind, who have studied the issue of corporal discipline closely, write that “the available evidence suggests that spanking prohibitions may increase the use of verbal hostility ... may also increase the number of parents who cannot control their children's coercive behavior, which puts those children at risk for delinquency and crime.”¹⁹ Similarly, a study of Austrian and German parents provides evidence that those who thought mild spanking was still legal were *less* likely to resort to severe punishment and more likely to use mild spanking.²⁰ Permitting mild corporal discipline within the framework laid out by the Supreme Court of Canada may prevent negative consequences. When no corporal discipline is permitted, parents may be more lenient until they reach a breaking point.

Parental Responsibility

This Committee should also consider the importance of parental responsibility. Canadian society permits a range of parenting styles because every child is unique. Parents know and love their children best. So, for the sake of their children, parents must be free to raise their children in the way they believe is best for them, within the reasonable limits defined by the Supreme Court of Canada. The removal of section 43 of the *Criminal Code* would risk burdening parents with criminal records (or even jail time) and removing children from their homes. The state must not intervene in families lightly. Forcibly removing children from their parents' care must be reserved for extreme cases where the child faces grave danger. Children's Aid Societies in Canada are already overwhelmed with casework and a lack of foster homes. Placing more children in the system because their parents use minor forms of corporal discipline will cause further unintended consequences with child welfare across the country.

Parents know their children best and are best placed to make informed decisions about raising them. Melissa Moschella writes that “preservation of the common good requires tolerating a great deal of imperfection in the exercise of parental authority, just as a great deal of imperfection in political authority should be tolerated before attempting to overthrow the

¹⁷ Larzelere et al., “Swedish Trends in Criminal Assaults against Minors since Banning Spanking, 1981-2010,” 129.

¹⁸ K. Palmerus & S. Scarr, *How Parents Discipline Young Children: Cultural Comparisons and Individual Differences*, Presentation at the Biennial Meeting of the Society for Research in Child Development (1995), cited in Robert E. Larzelere, “Combining Love and Limits in Authoritative Parenting,” in *Parenthood in America* 85 (Jack C. Westman ed., 2001).

¹⁹ Robert E. Larzelere and Diana Baumrind, “[Are Spanking Injunctions Scientifically Supported?](#)” *Law and Contemporary Problems* 73, no. 2 (March 2010): 84. See also Gerald R. Patterson, John B. Reid, and Thomas J. Dishion, *Antisocial Boys* (Castalia Publishing Company, 1992): 39-60.

²⁰ Kai-D. Bussmann, Claudia Erthal, and Andreas Schroth, “Effects of banning corporal punishment in Europe: A five-nation comparison,” in *Global Pathways to Abolish Physical Punishment: Realizing Children's Rights*, eds. Joan E. Durrant and Anne B. Smith, (New York: Routledge, 2010): 316-317. See Table 24.2.

government. The limits of that tolerance are situations of abuse and neglect, in which parental authority is clearly and non-controversially failing to fulfill its function ...”²¹

If the state interferes in the family when abuse or neglect are not present, that intrusion also inflicts profound psychological harm on children, while undermining parental authority and potentially breaking up families.²² This was made clear by former Chief Justice Beverley McLachlin, who wrote the decision in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*:

[Parliament’s] decision not to criminalize [corporal discipline] ... 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” (emphasis added).²³

Removing section 43 from the *Criminal Code* risks imposing profoundly negative consequences on children and their families.

Recommendation #1

This Committee should support retaining section 43 of Canada’s *Criminal Code*, allowing parents to choose whether to use conditional physical discipline as an appropriate form of correction for their child. In doing so, this Committee would align with the Supreme Court of Canada in respecting the responsibility of parents and protecting the integrity of the family.

Clarifying Language

A poll published in February 2023 revealed that 58% of Canadians moderately or strongly agree that parents should be allowed to physically discipline their children. At the same time, 51% of Canadians support repealing section 43 of the *Criminal Code*. The discrepancy between these numbers indicates that there is confusion about what exactly a repeal of section 43 would accomplish. The same poll indicated that only 26% of Canadians agree that schoolteachers should be allowed to discipline students.²⁴ As such, the rates of support for a repeal of section 43 are likely, in part, impacted by disapproval for inclusion of the words ‘schoolteacher’ and ‘pupil,’ rather than ‘parent’ and ‘child.’

Recommendation #2

If the Committee believes that further clarity is needed in section 43, the words ‘schoolteacher’ and ‘pupil’ ought to be removed. The remaining section would state “Every parent or person

²¹ Melissa Moschella, *To Whom Do Children Belong? Parental Rights, Civic Education, and Children’s Autonomy* (New York, NY: Cambridge University Press, 2016), 48.

²² Moschella, *To Whom Do Children Belong?* 69.

²³ *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76, 2004 SCC 4, at para. 62 (emphasis added).

²⁴ Mario Canseco, “[Views on Physically Disciplining Children Shifting in Canada](#),” Research Co., Feb. 17, 2023.

standing in the place of a parent is justified in using force by way of correction toward a child who is under his care, if the force does not exceed what is reasonable under the circumstances.”

Existing Regulations

Despite some potential confusion among the public, the Supreme Court of Canada has clarified the limits of section 43 in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*. Force must be sober and reasoned, address actual behaviour, and be intended to restrain, control, or express symbolic disapproval. The child cannot be under the age of two or over the age of 12. Force may not involve objects, such as rulers or belts, may not be applied to the head, and must be focused on correction in the circumstances rather than based on the gravity of the child’s behaviour. Finally, corporal punishment may not be used in the school context, although teachers may use force in limited circumstances to restrain a child.²⁵

Recommendation #3

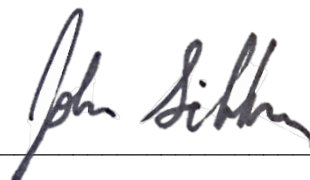
If further clarity is required, Parliament should add a new Section 43.1, which states:

For greater certainty:

- a. Force must be sober and reasoned, address actual behaviour and be intended to restrain, control or express symbolic disapproval. The purpose must always be the education or discipline of the child.
- b. Force cannot be applied to a child under two, over the age of twelve, or to a child who is incapable of learning from the application of force because of disability or some other contextual factor.
- c. Force must not harm or degrade the child and must not be based on the gravity of the wrongdoing.
- d. Parents or caregivers may not use objects to discipline a child, and force may not be applied to the face or head.
- e. Teachers cannot use force for physical punishment. Teachers may be permitted to use reasonable force toward a child in appropriate circumstances, such as to remove a child from a classroom.

Respectfully submitted on behalf of ARPA Canada,





²⁵ [Canadian Foundation for Children, Youth and the Law v. Canada \(Attorney General\)](#), [2004] 1 S.C.R. 76, 2004 SCC 4, at paras. 24-46. See also Laura Barnett, “[The “Spanking” Law: Section 43 of the Criminal Code,](#)” *Library of Parliament*.

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