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**OPINION**

# Canada should repeal 'archaic' law permitting corporal punishment

By **JOAN DURRANT, RON ENSOM, PETER DUDDING, AND DON STUART** JANUARY 4, 2021

Research shows that corporal punishment is ineffective and harmful, and 650 professional organizations across the country have called on Canada to repeal the law.



The government of Canada, including Justice Minister David Lametti, should act and repeal section 43 of the Criminal Code to end an archaic law that gives adults licence to intentionally inflict violence on children, write legal and social work scholars. *The Hill Times photograph by Andrew Meade*

Canada recently celebrated National Child Day, recognizing our commitment to upholding the rights of children. Yet despite this annual celebration, we continue to violate children's basic rights to protection from violence. Most Canadians would be surprised to know that our law not only excuses but justifies hitting and hurting children in the name of discipline. Placed in our Criminal Code in 1892, this law has remained while all adults have gained protection from corporal punishment. Children are the only citizens who Canada has steadfastly refused to protect from the intentional infliction of pain as a teaching tool.

Canada ratified the United Nations Convention on the Rights of the Child in 1991, committing to meet its standards. Since then Canada has been repeatedly admonished for failing to uphold children's rights to protection. In its 1995, 2003 and 2012 Concluding Observations, the UN Committee on the Rights of the Child strongly urged Canada to repeal Section 43 of the Criminal Code, the law that justifies punitive violence against children. By 2012, the committee was "gravely concerned that corporal punishment is condoned by law."

Beyond the clear human rights imperative to ensure children's full protection from assault, there is a large and ever-growing body of research demonstrating that corporal punishment contributes to aggression, anti-social behaviour, and mental health problems in childhood—and to dating violence and intimate partner violence in later life. It erodes parent-child relationships and impairs children's internalization of moral values. It amplifies the risk of severe violence against children. And it affects the developing architecture of the brain, slowing intellectual and language development and the ability to regulate emotions. There is no evidence that corporal punishment has any positive long-term outcomes whatsoever. Our knowledge of its harmful impacts has evolved, like our knowledge of the heightened risk when children are exposed to second-hand smoke or not buckled into seatbelts.

Canada is falling far behind on this issue. Sixty nations to date have prohibited all corporal punishment of children. These prohibitions are found throughout the world—nine in Africa, 10 in Latin America, five in the Asia-Pacific, 35 in Europe and one in the Middle East. They are found across the world's cultures, faiths, levels of economic development, political leanings, and legal systems. They have been passed by governments that confronted their failure to protect the bodies and rights of their smallest and most vulnerable citizens. Evidence is growing that such laws have rapid and dramatic effects on parents' attitudes and behaviour, reducing both approval and prevalence of corporal punishment of children.

Some say that the Canadian public would not support this legal change. The evidence indicates otherwise. As long ago as 2003, an independent national poll found that repeal of Section 43 would be supported by 72 per cent of Canadians if research showed that corporal punishment is ineffective and harmful, and by 80 per cent if research showed it would reduce child abuse. This research exists in abundance. Its strength is demonstrated by the fact that, to date, 650 professional organizations across Canada have called for repeal. These include the Mental Health Commission, Canadian Medical Association, Canadian Psychological Association, Centre for Addiction and Mental Health, and Canadian Public Health Association. Clearly, the government would have strong support for taking action to protect children. It has fallen behind public opinion and failed to take initiative on this basic human rights measure.

Some argue that a legal change is not necessary; that we can end punitive violence against children through public education. This is akin to believing that we can end theft by telling people not to steal while retaining a law that permits theft. The law sets the standard. It defines what a society does not accept. A law that contradicts a societal goal undermines all efforts to reach that goal.

In 2004, the Supreme Court of Canada set limits on the force that parents can use. That decision prohibited parents from hitting infants and teenagers, using objects, and slapping children's heads. Not only was this decision an abdication of Canada's obligation to protect all children regardless of age, and all parts of their bodies; it created a situation whereby social workers find themselves explaining to parents how they can legally hurt their children – below the neck, with the hand, on children aged 2 to 12. And it left preschoolers with less protection than adults.

Some argue that Section 43 is necessary to protect children who need to be restrained for their own or others' protection. Section 43 is not about restraint. It clearly states that "force by way of correction is justified." It is rooted in an 1860 ruling by a British judge that force is justified to "correct what is evil in the child." Section 43 has never been used as a defence where a child was being protected by an adult. The Criminal Code excuses force used to defend oneself or another person (Section 34), to defend property (Section 35), and to prevent the commission of an offence (Section 27). Many professionals use restraint every day, including early childhood educators, youth workers, nurses working with physically or cognitively incapacitated patients, physiotherapists, coaches, and trainers. None of these people have access to the Section 43 defence—yet they are not charged for breaking up fights or moving, dressing, or protecting people. Section 43 is about punishment, not about necessary care, protection, or restraint.

Canada has been approved as a Pathfinder Country by the Global Partnership to End Violence against Children. To fulfill this role, Canada must take a strong and vocal stand for children's full protection from violence. How can we be a "pathfinder" when we cling to an archaic law that gives adults licence to intentionally inflict violence on children? Every year, thousands of children are physically maltreated in our country. In most cases, the adult was punishing the child. We cannot let another year pass while doing nothing. We are being called upon by the global community to act—to be a pathfinder. With 60 countries ahead of us on that path, we have a great deal of catching up to do.

It is time for Canada to fulfill its obligations to both children and parents. We must set a clear standard of "no violence" and their children as they develop, and building strong relationships. Our government must back them up, with a clear minimal standard of "no violence" and strong supports. In every country that has prohibited corporal punishment of children, the intent is not to punish parents, but to support them. There is no evidence of parents being dragged into the criminal justice system. Instead, governments have used their new laws to launch universal parent education and support.

Most parents want to be role models of non-violence. Non-violence for all citizens should be a value embraced by the government of Canada. It should promote non-violence from the earliest years, and support parents in being the role models they want to be. As we prepare for the 30th anniversary of Canada's ratification of the UN Convention on the Rights of the Child next December, Canada must repeal section 43 of the Criminal Code to regain its reputation on the international stage as a champion for children's human rights.

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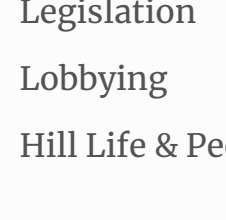
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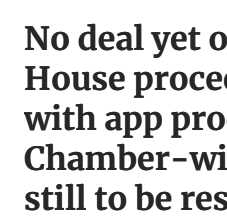
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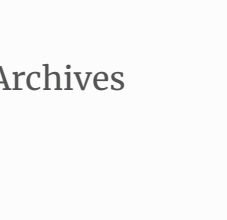
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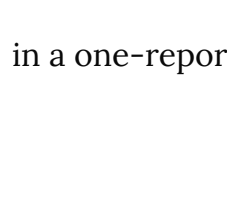
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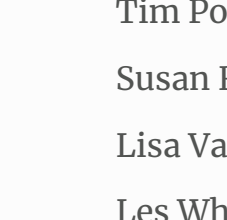
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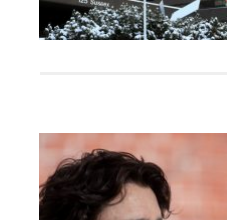
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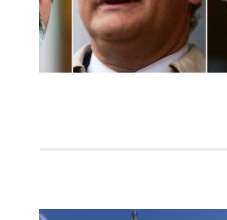
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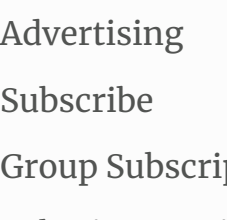
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