



Physical punishment of children: Assessing the validity of the legal definition of “reasonable force”¹

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In 2004, the Supreme Court of Canada set out seven criteria to distinguish *reasonable* from *abusive* corrective force with children. This information sheet summarizes a study that assessed the validity of the criteria defining reasonable corrective force by mapping them onto a nationally representative data set of substantiated cases of physical abuse.

The legal status of corporal punishment in Canada

Physical punishment is “an action intended to cause physical discomfort or pain to correct a child’s behavior.”² Physical punishment of children by parents is permitted under Section 43 of Canada’s *Criminal Code*:

Every schoolteacher, parent or person standing in the place of the 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.³

In 1999, Section 43 was challenged in the Ontario Superior Court on the basis that it violates children’s rights under three sections of the *Charter of Rights and Freedoms*⁴ and four articles of the *United Nations Convention on the Rights of the Child*,⁵ ratified by Canada in 1991. The court ruled that Section 43 does not violate children’s rights. This decision was upheld by the Ontario Court of Appeal in 2002 and by the Supreme Court of Canada in 2004. Although Section 43 remains the law in Canada, the Supreme Court set limits on the definition

of “reasonable force.” Acts falling within these limits are deemed “reasonable,” and are therefore permitted by law (see box: “Supreme Court of Canada’s limits on reasonable force”). Acts exceeding these limits are deemed “unreasonable,” and are therefore considered abusive.

Supreme Court of Canada’s limits on reasonable force

Under Canadian law, physical punishment of children is deemed reasonable if:

- it is administered by a parent (teachers are not permitted to use corporal punishment);
- the child is between the ages of 2 and 12, inclusive;
- the child is capable of learning from correction;
- it constitutes “minor corrective force of a transitory and trifling nature;”⁶
- it does not involve the use of objects or blows or slaps to the head;
- it is used for “educative or corrective purposes”⁷ and does not stem from a caregiver’s “frustration, loss of temper, or abusive personality;”⁸ and
- it is not degrading, inhuman, or harmful.

Limitation or abolition of physical punishment?

The Supreme Court's decision reflects the position that a certain level of physical punishment of children should be permitted by law to protect caregivers from prosecution. According to this "limitation position," legal criteria can be set out to distinguish "harmless" from "harmful" acts of physical punishment. This position is reflected in the laws of several English-speaking countries, such as Canada, Ireland, England and Scotland.⁹ Critics of the Supreme Court's decision argue that *no* physical punishment of children should be allowed in order to protect children from maltreatment. According to this "abolition position," the use of physical punishment *per se* places children at risk; attempts to define some physical punishment as safe and harmless perpetuates the notion that it is justified under certain circumstances. This position is reflected in the laws of 23 countries that have prohibited all physical punishment of children.¹⁰ In this study, the validity of the limitation and abolition positions was tested to determine whether the Supreme Court decision provides adequate protection to children.

How did the study test the validity of the limitation and abolition positions?

The Supreme Court of Canada set out limits intended to distinguish between harmless and harmful uses of corrective force with children (the limitation position). If the Court's limits are valid, substantiated cases of physical maltreatment should exceed each limit. To test this position (Test 1), an examination was made of the proportion of substantiated cases of physical maltreatment characterized by each of the following: 1) non-parental perpetrators; 2) victims younger than 2 and older than 12; 3) victims whose ability to learn from correction is impaired; 4) non-minor force; 5) use of objects; 6) non-corrective intent; and 7) degrading, inhuman and harmful acts.

If the abolition position is valid, the use of physical punishment *per se* will place children at risk, regardless of how it is used. To test this position (Test 2), an examination was made as to whether the use of spanking as a typical disciplinary method within the family was a better predictor of substantiation of physical maltreatment than the Court's limits on corrective force.

The study sample

The sample was drawn from the 2003 Canadian Incidence Study of Reported Child Abuse and Neglect

(CIS-2003), the third child abuse and neglect study to be conducted in Canada. The first cycle was completed in Ontario in 1993. The second and third cycles were Canada-wide studies, completed in 1998 and 2003 with support from the Public Health Agency of Canada. The *CIS-2003* tracked a sample of 14,200 child maltreatment investigations,¹¹ which was the basis for deriving national estimates. Information was collected directly from the investigating workers using a standard data collection form. A weighting procedure was used to derive annual national estimates from the annual volume of investigated cases in each study site and the size of the child population in the selected jurisdiction.¹² All analyses were based on the weighted samples to provide nationally representative statistics.

Definitions used in the study

The *CIS-2003* broadly classified investigations into one of five categories (physical abuse, sexual abuse, neglect, emotional/psychological maltreatment, or exposure to domestic violence) based on the primary form of maltreatment alleged in the investigation.¹³ Physical maltreatment was divided into five subcategories: 1) shaking, pushing, grabbing, or throwing; 2) hitting with a hand; 3) punching, kicking, or biting; 4) hitting with an object; or 5) other physical abuse. A case was considered substantiated if the balance of evidence indicated that maltreatment had occurred.

How was the study carried out?

The validity of the limitation position was tested in three steps. First, an examination was made of the proportion of substantiated physical maltreatment cases in which *each* of the Court's limits on corrective force was exceeded: 1) the perpetrator was not the victim's parent; 2) the victim was younger than 2 or older than 12; 3) the victim's ability to learn from correction was impaired; 4) more than minor force was used; 5) objects were used; or 6) the perpetrator's intent was not corrective. Second, an examination was made of the proportion of cases in which *at least one* of the Court's limits on corrective force was exceeded. Third, an examination was made of the proportion of cases in which *all* of the Court's limits on corrective force were exceeded. Finally, each of these proportions was compared to the proportion of cases in which spanking was used as a typical disciplinary method within the family.

To test the validity of the abolition position, the relative power of each of the Court's limits and the use of spanking to predict substantiation was

examined using logistic regressions. Next, the combination of variables that best predicted substantiation was identified using a stepwise multiple regression model.

What were the major findings?

The Court's limits defining reasonable force actually characterized the majority of substantiated cases of physical maltreatment:

- more than 90% of the cases involved parental perpetrators,
- 68.9% involved victims between the ages of 2 and 12,
- 87.3% involved children whose ability to learn from correction was not impaired,
- 53.7% involved the use of minor force,
- 81.2% did not involve the use of objects, and
- 76.8% involved corrective intent.

In addition, 23.8% of cases did not exceed *any* of the Court's limits and only 0.1% of cases exceeded *all* of them.¹⁴

Spanking was typically used as a form of discipline in 54.6% of cases. Therefore, spanking was characteristic of a greater proportion of substantiated child physical maltreatment cases than was *each* of the Court's defining criteria and the proportion of cases characterized by spanking was 546 times larger than the proportion characterized by *all* of the Court's criteria.

The logistic regression analysis revealed that:¹⁵

- the odds of substantiation were unrelated to whether the perpetrator was a parent, whether the child's ability to learn from correction was impaired, or whether an object was used,
- cases involving children aged 2 to 12 were more likely to be substantiated than those involving children under two but less likely to be substantiated than those involving children over 12,
- cases involving the use of non-minor force were 6.29 times as likely to be substantiated as those involving minor force, and
- cases involving families who typically used spanking as a form of discipline were 3.14 times as likely to be substantiated as those involving families who did not typically use spanking as a form of discipline.

The analyses¹⁶ showed that the use of non-minor force was the best predictor of substantiation, followed by the use of spanking as a typical

discipline method within the family. Together, use of non-minor force and use of spanking as a disciplinary method accounted for 24% of the variance in substantiation decisions. The child's age, the type of force used, and the child's ability to learn from correction were significant predictors of substantiation, but each accounted for less than 5% of the variance in substantiation decisions.

Which position was supported?

The findings from this study suggest that substantiated cases of child physical maltreatment are more likely to be characterized by the use of spanking as a disciplinary method within the family than by *each* of the limits set out by the Supreme Court of Canada. While in more than half (54.6%) of cases, spanking was typically used as a form of discipline in the child's home, none of the Court's limits on corrective force was exceeded in a majority of cases, and cases in which *all* of the Court's limits were exceeded were virtually non-existent. It was more likely that substantiated cases exceeded *at least one* of the Court's limits than that they involved spanking as a form of discipline, but almost one-quarter of substantiated cases did not exceed *any* of the Court's limits. If the Court's limits are valid indicators of maltreatment, all substantiated cases should exceed at least one. The results of this study suggest that a substantial proportion of incidents of child physical maltreatment are not being captured by the Court's limits on corrective force. Together, these findings suggest that abolishing physical punishment is more likely to reduce physical maltreatment than placing arbitrary limits on its use.

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- 1 This information sheet is based on the peer-reviewed article, Durrant, J., Trocmé, N., Fallon, B., Milne, C., & Black, T. (2008). Protection of children from physical maltreatment in Canada: An evaluation of the Supreme Court's definition of reasonable force. *Journal of Aggression, Maltreatment & Trauma*, 18, 1–24.
 - 2 Durrant, J.E., Ensom, R., & Coalition on Physical Punishment of Children and Youth (2004). *Joint Statement on Physical Punishment of Children and Youth*. Ottawa: Coalition on Physical Punishment of Children and Youth.
 - 3 *Criminal Code*, R.S.C.1985, c. C-34, s.1, available online from the Department of Justice Canada at: <http://laws.justice.gc.ca>
 - 4 *Canadian Charter of Rights and Freedoms*. Retrieved September 2, 2008 from: <http://laws.justice.gc.ca/en/charter/>
 - 5 *United Nations Convention on the Rights of the Child*. Retrieved September 2, 2008 from: <http://www2.ohchr.org/english/law/crc.htm>
 - 6 *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* [2004] 1 S.C.R. 76, 2004 SCC 4 at para. 40. Available at: <http://www.canlii.org/en/ca/scc/doc/2004/2004scc4/2004scc4.html>.

- 7 *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* [2004] 1 S.C.R. 76, 2004 SCC 4 at para. 24. Available at: <http://www.canlii.org/en/ca/scc/doc/2004/2004scc4/2004scc4.html>.
- 8 *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* [2004] 1 S.C.R. 76, 2004 SCC 4 at para. 40. Available at: <http://www.canlii.org/en/ca/scc/doc/2004/2004scc4/2004scc4.html>.
- 9 For information on the Global Initiative to End all Corporal Punishment of Children see www.endcorporalpunishment.org
- 10 Sweden, Finland, Norway, Austria, Cyprus, Denmark, Latvia, Croatia, Israel, Germany, Bulgaria, Iceland, Hungary, Ukraine, Romania, Greece, Netherlands, New Zealand, Portugal, Uruguay, Spain, Venezuela, and Costa Rica.
- 11 The present analysis examines the core sample of 11,562 investigations involving children aged 0 to 15 years of age in all provinces and territories except Quebec, due to the large amount of missing data in the Quebec portion of the *CIS-2003*.
- 12 For detailed weighting procedures, see Trocmé, N., Fallon, B., MacLaurin, B., Daciuk, J., Felstiner, C., Black, T., et al. (2005). *Canadian incidence study of reported child abuse and neglect – 2003: Major findings*. Ottawa, ON: Minister of Public Works and Government Services of Canada.
- 13 For detailed definitions of the primary maltreatment categories and their subcategories, see Trocmé, N., Fallon, B., MacLaurin, B., Daciuk, J., Felstiner, C., Black, T., et al. (2005). *Canadian incidence study of reported child abuse and neglect – 2003: Major findings*. Ottawa, ON: Minister of Public Works and Government Services of Canada.
- 14 Because parental perpetrators accounted for such a large majority of cases, we excluded this criterion from examinations of the proportions of cases that exceeded any or all of the Court's limits.
- 15 Corrective intent was not included in these analyses because the item was not completed by workers in the case of unsubstantiated investigations.
- 16 "Non-parental perpetrator" was omitted from these analyses because it accounted for such a small proportion of the cases.

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