

BRIEFING FROM GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

BRIEFING FOR THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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*From Peter Newell, Joint Coordinator, Global Initiative
info@endcorporalpunishment.org*

Of the state parties to be examined in the 36th session of the Committee on Economic, Social and Cultural Rights, none has explicitly prohibited in law all corporal punishment of children in all settings. Canada has so far ignored two recommendations (in 1995 and 2003) from the Committee on the Rights of the Child to prohibit all corporal punishment effectively. A recent (January 2004) Supreme Court judgment failed to declare the defence of “lawful correction” unconstitutional. A dissenting opinion by Judge Louise Arbour, now High Commissioner for Human Rights, asserted children’s right to full protection. We very much hope that the Committee will echo the recommendations of the Committee on the Rights of the Child, as it has done recently in the case of the UK and also Malta.

We hope that the Committee will question all states on their progress towards eliminating all corporal punishment of children, and make recommendations that states parties prohibit corporal punishment in the home, schools, the juvenile justice system and other institutions and forms of childcare, and support this with appropriate public education and professional training on positive, non-violent forms of discipline.

CANADA (fourth report – E/C.12/4/Add.15; fifth periodic report – E/C.12/CAN/5)

Corporal punishment is lawful in the **home** under section 43 of the Criminal Code which 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 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 (*Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, file no. 29113). 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.

Research has consistently found widespread use and strong public acceptance of corporal punishment by parents. For example, a survey of 1,000 people in an SES/Sun Media poll on the night before the January 2004 Supreme Court ruling found that 64% support the use of force such as spanking by parents to discipline a child.¹ In a national postal survey of households with children under the age of 6, completed by 1,643 parents, carried out in 1998-1999, 51% of parents reported using physical punishment – more often on children aged 1-5 years, but with 40% of parents of infants under the age of one year reported using physical punishment on their babies.²

Regarding **schools**, the 2004 Supreme Court judgement (see above) 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. As at June 2005, corporal punishment was prohibited by law in state schools in all states and territories except Alberta, Manitoba, Ontario and Saskatchewan.

¹ “Spanking poll backs ruling”, *Winnipeg Sun*, Manitoba, 1 February 2004

² Oldershaw, L., 2002, *A national survey of parents of young children*, Toronto: Invest in Kids Foundation

Corporal punishment is prohibited in the **penal system** throughout Canada. It is prohibited in **other institutions and forms of childcare** in some but not all states and territories. It is lawful in child care in New Brunswick and in foster care in New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon. In Quebec, carers have no right of correction under the Civil Code, but section 43 of the federal Criminal Code applies (see above). In Ontario, it is prohibited only 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.

In its concluding observations on the State party's second report in 2003, the **Committee on the Rights of the Child** stated that it is "is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment" (CRC/C/15/Add.215, para 32). Reiterating its earlier recommendations of 1995, the Committee recommended that legislation be enacted to prohibit all forms of violence against children in the family, schools and other institutions and in particular urged the State party to "adopt legislation to remove the existing authorization of the use of 'reasonable force' in disciplining children" (para 33).