

**Brief 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)**

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Submitted by Dr. Robert Mauder and Dr. Jonathan Hunter, Professors in the Department of Psychiatry, University of Toronto.

We submit to the Senate Standing Committee on Legal and Constitutional Affairs that section 43 of the Criminal Code of Canada should be repealed. We base this recommendation on accumulated evidence regarding the harms and lack of benefits associated with physical punishment of children, the principles of public health, and consideration of children's human rights.

Children's human rights

In 1991, Canada signed the United Nations Convention on the Rights of the Child, the most widely ratified human rights treaty in history. The Convention establishes, as described by UNICEF, that "children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights."

Since then, and in alignment with the accumulating evidence that physical punishment of children is unnecessary as a corrective and causes harm, many countries and states have banned spanking, 52 as of 2017. Canada lags its peers in this respect. Repealing section 43 would allow Canada to meet its obligations under the UN Convention on the Rights of the Child.

Adverse childhood experiences contribute to poor health throughout life

We are psychiatrists who specialize in the treatment of adults who suffer from the combination of both chronic physical health conditions and mental health challenges. This is a very common combination. Our work in this area leads us to appreciate the impact of adverse childhood experiences (abbreviated as ACEs), which include harmful experiences that range from physical and sexual abuse to emotional abuse and neglect,

and exposure to various factors that challenge effective parenting, such as parents' mental health challenges or addiction.

ACEs are very common; most adults have been exposed to at least one type while growing up. They also substantially increase the risk of serious illness throughout life, with the risk growing as the number of types of such exposures increases. For example, it was estimated by US Department of Health and Human Services that ACEs account for between one quarter and one half the risk for many potentially fatal chronic diseases, such as diseases of the heart, liver, and respiratory system. Research in the United Kingdom found that "mortality was strongly linked to ACEs... Radically different life-course trajectories are associated with exposure to increased ACEs."¹ In Canada, a study of over 20,000 people who were representative of the Canadian population found that child abuse (which refers to experiences on the more severe end of the spectrum of ACEs) increased the risk of the most common mental health problems by a factor of 2-3 times and increased the risk of suicide attempts by 5 or more times.²

Thus, ACEs are both extremely common, and substantially affect health throughout life.

The relationship between physical punishment and lifetime health risks is causal

The United Nations Committee on the Rights of the Child defined physical punishment as the use of physical force to cause a child to experience some degree of pain or discomfort with the intention of modifying the child's behavior. There is a large body of evidence linking physical punishment to harmful outcomes in children, which include "externalizing behaviour" such as aggression and anti-social behaviour, "internalizing problems" such as depression and anxiety, as well reducing the quality of parent-child relationships and reducing the child's internalization of moral thinking (i.e., doing the right thing when no one is watching).

This evidence is correlational, meaning that where one finds more of one thing (spanking), one also finds more of another thing (e.g., problems with internalizing and externalizing). Correlational evidence does not prove causality. Critics offer alternative explanations, such as that causation is in the other direction (i.e., a child's aggression causes spanking) or that the harm comes from a third factor (such as more severe abuse perpetrated by parents who also happen to spank their children). Stronger types of direct evidence, such as the kinds provided by experiments and randomized controlled trials, will never be available because it is unethical to conduct trials where children are randomly assigned to being hit or not hit, for example.

In response to this specific limitation of the available evidence, experts have reviewed the large literature that links physical punishment to adverse outcomes using the same criteria to assess causality that were used to link smoking to its harmful outcomes when similar objections were raised about that issue in the 1960s. These criteria are that “(a) the hypothesized causal pathway must be plausible and have coherence with existing facts about the predictor and the outcome; (b) the behavior must be strongly and consistently correlated with the outcome of interest; (c) the behavior must temporally precede the outcome; (d) a gradient in the association between the predictor and the outcome is observed; and (e) experiments or statistical methods establish that the association between the two cannot be attributed to spurious factors.” The evidence of the association of physical punishment with harms to children passes these tests.³

Furthermore, Canadian researcher, Dr. Tracie Afifi, and her colleagues have demonstrated that spanking should be considered an ACE. It is associated with a higher risk in adulthood of suicide attempts, moderate to heavy drinking, and the use of street drugs. Other types of ACEs are more likely to occur to children who are spanked. Importantly, the added health risk from spanking occurs above and beyond the risk that results from experiencing physical and emotional abuse for children who experience both types of harm. Since physical punishment causes similar long-term effects as other ACEs and spanking co-occurs with these ACEs more often than one would expect by chance, Dr. Afifi concludes that physical punishment should be considered an ACE and that it occurs on a spectrum of violence against children.⁴

This evidence leads us to conclude that the risk of physical punishment of children, as currently allowed under section 43, is harmful in itself and as an example of a broader class of harmful experiences. Beyond this, from a public health perspective it is important that physical punishment causes health problems that persist throughout life, and these include many of the most common chronic diseases of adulthood.

Spanking is not an effective corrective of behaviour

Section 43 of the Criminal Code of Canada justifies physical force used on children in the specific circumstance in which a “school teacher, parent or person standing in the place of a parent” uses force “by way of correction toward a pupil or child... if the force does not exceed what is reasonable in the circumstances.” This raises the question of whether physical punishment ever serves to effectively correct behaviour. Although there is much less research on any potential benefits of spanking than on its clear harms, an analysis of relevant research in the Canadian Medical Association Journal reported that the few trials

available “showed that physical punishment was no more effective than other methods in eliciting compliance” and “there was no support for the necessity of the physical punishment.”⁵

A public health approach to reducing the harms of ACEs

The adverse effects of ACEs are an enormous public health problem. This is the inevitable outcome when a very common harmful exposure leads to a wide range of serious and burdensome health outcomes. The most apt historical analogy is the wide range of health problems resulting from the very common behaviour of smoking. We are at a similar position now to the position of society with respect to the harms of smoking in the 1960s: the evidence is clear, but the efforts to reduce harm have barely begun.

The smoking analogy is instructive because it points towards the types of intervention that are required to change behaviour and reduce the harm. These efforts are prolonged and multi-pronged interventions at various societal levels. What was required to reduce the harms of smoking were a combination of many strategies enacted over decades, including education, changes in laws and policies, and lawsuits holding tobacco companies to account. Importantly for the sake of the analogy, one of the useful and necessary outcomes of these interventions was a shift in how rights were understood to balance against one another: a shift favouring the right of people to not be exposed to the harms of second-hand smoke over the rights of smokers to choose their own poison.

Efforts to reduce the harms of ACEs will likely need to be similarly diverse and persistent. One of the beneficial outcomes of these efforts will need to be a shift in how rights are understood to balance against one another: a shift favouring the human rights of children not to be harmed over the rights of parents to choose whatever form of discipline they wish.

In this context, repealing section 43 will have enduring value as an official position that the harms experienced by children are being taken seriously by our nation. It will also serve as one element of a multi-pronged public health strategy to reduce the harmful outcomes of ACEs.

Banning physical punishment is helpful and right

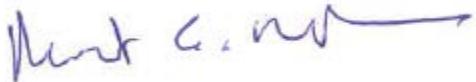
In summary, the foremost reason not to excuse the physical punishment of children in the Criminal Code is that it adds no value as a corrective of behaviour and is harmful to

children, even after they have grown to be adults.

Other reasons to repeal section 43 are that:

- physical punishment occurs on a spectrum of violence to children, and so, efforts to reduce physical punishment may serve to change parental attitudes towards a wider range of harmful parental behaviours.
- repealing section 43 is a moral choice to hold the rights of children to safety and well-being as more important than the rights of parents to choose to discipline their children as they see fit
- repealing section 43 is one step toward a broad public policy to reduce the societal costs of ACES
- repealing section will allow Canada to fulfill its obligations under the UN Convention on the Rights of the Child

Respectfully submitted,



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1. Bellis MA, Hughes K, Leckenby N, Hardcastle KA, Perkins C, Lowey H. Measuring mortality and the burden of adult disease associated with adverse childhood experiences in England: a national survey. *J Public Health (Oxf)*. 2015;37(3):445-454.
2. Afifi TO, MacMillan HL, Boyle M, Taillieu T, Cheung K, Sareen J. Child abuse and mental disorders in Canada. *CMAJ*. 2014;186(9):E324-32.
3. Gershoff ET, Goodman GS, Miller-Perrin CL, Holden GW, Jackson Y, Kazdin AE. The strength of the causal evidence against physical punishment of children and its implications for parents, psychologists, and policymakers. *American Psychologist*. 2018;73(5):626-638.
4. Afifi TO, Ford D, Gershoff ET, et al. Spanking and adult mental health impairment: The case for the designation of spanking as an adverse childhood experience. *Child Abuse Negl*. 2017;71:24-31.
5. Durrant J, Ensom R. Physical punishment of children: Lessons from 20 years of research. *CMAJ Canadian Medical Association Journal*. 2012;184(12):1373-1377.