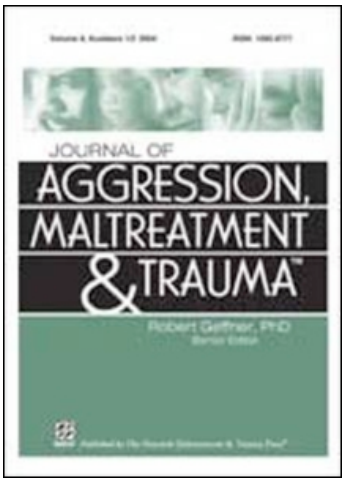

Journal of Aggression, Maltreatment & Trauma
Publication details, including instructions for authors and subscription information:
http://www.informaworld.com/smpp/title~content=t792303964

Protection of Children from Physical Maltreatment in Canada: An Evaluation of the Supreme Court's Definition of Reasonable Force

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Online Publication Date: 01 January 2009

To cite this Article Durrant, Joan E., Trocmé, Nico, Fallon, Barbara, Milne, Cheryl and Black, Tara(2009)'Protection of Children from Physical Maltreatment in Canada: An Evaluation of the Supreme Court's Definition of Reasonable Force',Journal of Aggression, Maltreatment & Trauma,18:1,64 — 87
To link to this Article: DOI: 10.1080/10926770802610640
URL: http://dx.doi.org/10.1080/10926770802610640

Journal of Aggression, Maltreatment & Trauma, 18:64–87, 2009

ISSN: 1092-6771 print/1545-083X online
DOI: 10.1080/10926770802610640

Routledge
Taylor & Francis Group

CHILD AND ADOLESCENT MALTREATMENT

Protection of Children from Physical Maltreatment in Canada: An Evaluation of the Supreme Court's Definition of Reasonable Force

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In 2004, the Supreme Court of Canada set out seven criteria to distinguish reasonable from abusive corrective force with children. We tested the validity of those criteria by mapping them onto a nationally representative data set of substantiated cases of physical abuse. The court's criteria defining reasonable force actually characterized the majority of cases of child physical maltreatment in Canada. These cases were more likely to be characterized by the use of spanking in the family than by each of the criteria set out by the Supreme Court. One in five cases was not characterized by any of the court's criteria, and virtually none were characterized by all of them. The findings provide stronger support for abolishing physical punishment than for legal attempts to narrow its definition.

Received 30 January 2008; accepted 9 November 2008.

The analysis for this paper was supported by the Canadian Institutes of Health Research, grant #43277.

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KEYWORDS corporal punishment, physical abuse, child maltreatment, legislation, children's rights

There is a growing trend among governments around the world to abolish corporal punishment of children. More than 150 countries have prohibited corporal punishment as a sentence for a crime committed by a child, and 102 have prohibited it as a disciplinary measure for children in penal institutions (Global Initiative to End All Corporal Punishment, 2007), reflecting a growing emphasis on rehabilitation and human rights over retribution. More than 100 countries have explicitly abolished all corporal punishment in schools (Global Initiative to End All Corporal Punishment) as part of a global shift in educational practice, theories of learning and motivation, and approaches to conflict resolution. Once common in classrooms around the world, caning and birching are rapidly being replaced by special education programs, cognitive-behavioral interventions, antibullying initiatives, and school-parent-community partnerships.

In recent decades, the principles upon which penal and school prohibitions are based have begun to be applied in a broader range of settings in which children learn, play, and live, such as child care and foster care. At least 27 countries now prohibit corporal punishment in alternative care settings (Global Initiative to End All Corporal Punishment, 2007). Twenty-three countries[1] have explicitly abolished corporal punishment in all settings, including the child's home (Global Initiative to End All Corporal Punishment, n.d.), based on the principle that children have a fundamental right to protection equal to that of any other human being. Recognition of this principle has been given recent impetus by the *World Report on Violence Against Children* (Pinheiro, 2006), which recommends that all corporal punishment of children be abolished by 2009.

The Legal Status of Corporal Punishment in Canada

In Canada, progress on this issue has been slower than in some other parts of the world. Corporal punishment is prohibited in juvenile detention centers in all 13 provinces and territories, but 3 provinces have yet to explicitly ban it in schools. While all but one province/territory has prohibited it in child care settings, eight have not yet prohibited it in foster care. Such legal inconsistencies indicate that the principle of equal protection is being applied arbitrarily, giving children living in different provinces varying levels of protection. For example, a child living in the care of foster parents in British

[1] These countries are (in chronological order) Sweden, Finland, Norway, Austria, Cyprus, Denmark, Latvia, Croatia, Israel, Germany, Bulgaria, Iceland, Hungary, Ukraine, Romania, Greece, Netherlands, New Zealand, Portugal, Uruguay, Spain, Venezuela, Costa Rica.

Columbia is protected from physical punishment by her foster parents, child care providers, and teachers. But if she should be moved to New Brunswick, she would no longer be protected in her foster home or child care center.

Moreover, the federal *Criminal Code* (1985) permits physical punishment by parents, schoolteachers, and persons standing in the place of a parent. This law provides a defense to criminal charges of assault if the force applied is "reasonable" and "for purposes of correction." These contradictions among jurisdictions and statutes can create situations in which a parent is permitted to physically punish a biological child, but not a foster child—or a foster parent is prohibited from physically punishing a foster child by provincial law, but is protected from criminal charges by the federal law.

The constitutional challenge to Section 43 of the Criminal Code (1985)

An attempt to achieve greater consistency of protection for children across Canada was made in 1999, when the federal criminal law that permits corporal punishment was challenged in the courts on the basis that it violates Canada's constitution, the *Canadian Charter of Rights and Freedoms* (1982). This law, Section 43 of the *Criminal Code* (1985), states the following:

> 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. (R.S., c. C-34, s. 43)

It was argued in the Ontario Superior Court that this law violates three sections of the *Charter of Rights and Freedoms*: (a) Section 7, which guarantees security of the person; (b) Section 12, which upholds the right not to be subjected to cruel or unusual punishment; and (c) Section 15(1), which guarantees nondiscrimination on the basis of age. It was further argued that Section 43 of the *Criminal Code* violates four articles of the United Nations Convention on the Rights of the Child (1989), ratified by Canada in 1991: (a) Article 3, "In all actions concerning children . . . the best interests of the child shall be a primary consideration;" (b) Article 18, [With respect to parental responsibilities] "the best interests of the child will be their basic concern;" (c) Article 19, "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse . . . while in the care of parent(s), legal guardian(s) or any other person who has the care of the child;" and (d) Article 28, "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity."

In its ruling on the constitutionality of Section 43, the Ontario Superior Court recognized the "growing body of evidence that even mild forms of

corporal punishment do no good and may cause harm" (para. 132) and noted that not a single expert witness on either side of the case advocated or recommended physical punishment as a form of discipline—but ruled that Section 43 does not violate the *Canadian Charter of Rights and Freedoms* (1982; *Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2000). In January 2002, this decision was upheld by the Ontario Court of Appeal (*Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2002). That decision was appealed to the Supreme Court of Canada. In January 2004, in a 7–2 decision, the Supreme Court upheld the constitutionality of Section 43 (*Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2004; For analyses of this decision, see Carter, 2005; Durrant, 2007; Grover, 2003; McGillivray & Durrant, 2006; Turner, 2002; Watkinson, 2006). As a result, it remains the law in Canada.

The Supreme Court's definition of "reasonable" force

The Supreme Court's decision declaring Section 43 constitutional (*Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2004) seeks to protect parents from prosecution for assault while attempting to protect children from abuse by delineating a zone of "reasonable force." Specifically, the court defined physical punishment as reasonable and therefore permitted if (a) it is administered by a parent (teachers may not use corporal punishment); (b) the child is between the ages of 2 and 12 years, inclusive; (c) the child is capable of learning from it; (d) it constitutes "minor corrective force of a transitory and trifling nature;" (e) it does not involve the use of objects or blows or slaps to the head; (f) it is corrective—that is, not the result of the caregiver's "frustration, loss of temper or abusive personality;" and (g) it is not degrading, inhuman or harmful.

Limitation Versus Abolition

The Supreme Court considers children who experience physical punishment that falls within its definition of *reasonable* to be adequately protected from physical maltreatment. In the words of the Chief Justice, Section 43 "ensures the criminal law will not be used where the force is part of a genuine effort to educate the child, poses no reasonable risk of harm that is more than transitory and trifling, and is reasonable under the circumstances" (para. 59). Therefore the court suggests that children between the ages of 2 and 12 years who are struck by a parent's hand with the intent to correct are not at risk of maltreatment; that there is a "safe zone" of physical punishment in which children are not harmed. The court also believes that the criteria it identified to define reasonable force are adequate to protect children from maltreatment in their homes.

Critics of the court's decision argue that the notion of a *safe* level of physical punishment is fundamentally flawed, noting the risk of escalation inherent in any use of physical force to punish a child (Vasta, 1982). They base their argument on research demonstrating that most physical maltreatment actually *is* physical punishment (Gil, 1970; Kadushin & Martin, 1981; Margolin, 1990; Trocmé et al., 2001) and that physical punishment per se places children at risk. They call for public education and law reform aimed at removing this risk factor from children's lives altogether, rather than creating arbitrary definitions of *harmless* physical punishment. According to this position, the court's criteria for defining *reasonable force* do not protect children adequately because they perpetuate the belief that some level of physical punishment is safe and harmless.

This debate continues in many countries. While some argue that a certain level of physical punishment of children should be permitted in order to protect caregivers from prosecution (the *limitation position*), others argue that no physical punishment of children should be allowed in order to protect children from maltreatment (the *abolition position*). According to the limitation position, abusive and nonabusive force can be differentiated and defined in law. This position is reflected in the laws of countries such as England, Scotland, and Canada, where legal criteria have been set out to distinguish *harmless* from *harmful* acts. According to the abolition position, however, this dichotomy is a false one that perpetuates the notion that physical punishment of children is justified, thereby placing children at risk. This position is reflected in the laws of countries such as Germany, New Zealand, and Uruguay, where all physical punishment of children has been abolished.

In Canada, child welfare agencies generally support the abolition position. For example, the Child Welfare League of Canada formally supported the challenge to the constitutionality of Section 43, arguing that the law is an obstacle to prevention and intervention (Ontario Association of Children's Aid Societies, 2002). At least 23 child welfare agencies have official positions supporting abolition, as do the Canadian Association of Social Workers, Canadian Council of Child and Youth Care Associations, First Nations Child and Family Caring Society, and the Children's Aid Foundation. The Supreme Court decision was strongly criticized by the child welfare community for its mixed message. As Bernstein (2005) stated, "The need for child protection workers to explain permissible corporal punishment according to who may use physical punishment, on what ages, body parts and capacities of children, with what force and in what circumstances is a significant challenge" (p. 80). Similarly Vatcher (2000) argued,

> The only legal decision that will enable us to effectively address physical abuse in child welfare settings is the striking down of section 43. Any amendment or interpretation of the law that condones the hitting of children leaves front-line workers in the same quandary: having to make

> fine line distinctions and engage in absurd discussions with clients about which body parts of children are OK to hit, and turning a blind eye to the emotional and psychological effects of corporal punishment. (p. 9)

Greene (1999) pointed out that,

> Section 43 is also in direct conflict with child protection legislation in Canada. Provincial child welfare legislation includes, as one of the grounds for a protection order, physical harm or a substantial risk of physical harm . . . It is clear that s. 43 both contradicts and undermines the provincial legislation in respect of child protection. (p. 478)

The Present Study

The present study provides an evaluation of the validity of the limitation and abolition positions. To assess the limitation position, we operationalized the criteria set out by the Supreme Court of Canada, applied them to a nationally representative sample of physical maltreatment cases investigated by Canadian child welfare authorities, and assessed their utility in identifying cases that were substantiated following investigation. In substantiated cases, the balance of evidence indicates that the child was harmed or was at substantial risk of harm. If the court's criteria can distinguish between harmless and harmful use of force, there should be consistency between those criteria and the characteristics of substantiated cases of child physical maltreatment. To assess the abolition position, we examined the relationship between substantiated child physical maltreatment and the use of spanking as a typical disciplinary method within the family. If it is the use of physical punishment per se that places children at risk, substantiated child physical maltreatment should be associated more strongly with the use of spanking within the family than with the court's criteria for defining unreasonable force.

Test 1

The Court did not provide guidance regarding whether its criteria are to be applied individually or in combination.[2] If one limit is exceeded, does this

[2] For example, if a parent slaps the hand of a 20-month-old child with the intent to teach her not to touch the stove, it is not clear whether this act would be considered reasonable because it was committed by a parent, without an object, with corrective intent, or whether it would be considered unreasonable because of the child's age. This confusion is reflected in the reported cases interpreting the Supreme Court's decision. Many judgments have focused only on the level of force (e.g., a slap to a teenager's face was deemed to be trivial and therefore allowed) or the motivation of the parent (e.g., a relatively minor slap to a teenager's shoulder that was motivated by anger and frustration led to a conviction). However, the use of an object (often a belt) appears to be consistently interpreted as unreasonable force.

constitute unreasonable force, or must two, three, or all of the limits be breached? Because the court did not explain how its criteria should be applied, we examined the limitation and abolition positions in three ways.

First, we examined whether *each* of the court's limits is a valid indicator of maltreatment. If this is the case, most substantiated cases of child physical maltreatment should be characterized by each of the following: (a) nonparental perpetrators, (b) victims younger than 2 and older than 12 years, (c) victims whose ability to learn from correction is impaired, (d) nonminor force, (e) use of objects, (f) noncorrective intent, and (g) degrading, inhuman, and harmful acts. We then compared the proportion of cases characterized by the use of spanking within the family to the proportion of cases characterized by each of the court's criteria.

Second, we examined whether *any* of the court's limits are valid indicators of maltreatment. If this is the case, virtually all substantiated cases of child physical maltreatment should be characterized by at least one of the following: (a) nonparental perpetrators, (b) victims younger than 2 and older than 12 years, (c) victims whose ability to learn from correction is impaired, (d) nonminor force, (e) use of objects, (f) noncorrective intent, and (g) degrading, inhuman, and harmful acts. We then compared the proportion of cases characterized by the use of physical punishment as a disciplinary method within the family to the proportion of cases characterized by at least one of the court's criteria.

Third, we examined whether *all* of the court's limits together constitute a valid indicator of maltreatment. If this is the case, most substantiated cases of child physical maltreatment should be characterized by all of the following: (a) nonparental perpetrators, (b) victims younger than 2 and older than 12 years, (c) victims whose ability to learn from correction is impaired, (d) nonminor force, (e) use of objects, (f) noncorrective intent, and (g) degrading, inhuman, and harmful acts. We then compared the proportion of cases characterized by the use of physical punishment as a disciplinary method within the family to the proportion of cases characterized by all of the court's criteria.

Test 2

Second, we examined the relative power of the court's criteria and the use of physical punishment as a disciplinary method within the family to predict the likelihood that a child physical maltreatment report will be substantiated. If the court's limits are valid indicators of maltreatment, they should be the most powerful predictors of substantiation. That is, the odds of a report being substantiated should be significantly increased by each of the following: (a) nonparental perpetrator, (b) child younger than 2 or older than 12 years, (c) child whose ability to learn from correction is impaired, (d) nonminor force, (e) use of objects, (f) noncorrective intent, and (g) degrading, inhuman,

and harmful acts. If, however, it is the use of physical punishment rather than the characteristics of a specific act that places children at risk, the use of physical punishment as a disciplinary method within the family should be a more powerful predictor of substantiation than the court's criteria.

Hypothesis

On the basis of the consistency of research findings demonstrating that physical punishment per se places children at risk for maltreatment (Gershoff, 2002; Gil, 1970; Kadushin & Martin, 1981; Margolin, 1990; Trocmé et al., 2001) and the weight of support by child welfare professionals for the full repeal of Section 43, we predicted that the abolition position would be supported.

METHOD

Data Set

The data set used to examine the limitation and abolition positions was the 2003 *Canadian Incidence Study of Reported Child Abuse and Neglect* (CIS-2003; Trocmé et al., 2005), a Canada-wide study conducted by a team of university-based researchers and the Public Health Agency of Canada. The CIS-2003 tracked a sample of 14,200 child maltreatment investigations conducted during the fall of 2003 in 63 out of 400 child welfare service areas across Canada. Because of the large amount of missing data in the Québec portion of the study, the present analysis examines the core sample of 11,562 investigations involving children age 0 to 15 years[3] in all provinces and territories except Québec.

Information was obtained directly from investigating child welfare workers using a three-page data collection form describing the alleged maltreatment, the children, their families, and the results of the investigations. Participating workers received a half-day training session covering key definitions and study procedures. In addition, all data collection forms were reviewed for completeness and consistency by the study research assistants.

Data were collected by workers during their standard investigations; no additional instruments were used to collect information from children or families. Cases open for investigation by a child welfare authority were included

[3] In some provinces/territories, child welfare services are provided for children under 19 years of age, but in others services are provided only for children under 16 years of age. As a result, the availability of data relating to children age 16 to 18 years is inconsistent across regions. Therefore only cases involving children age 0 to 15 years were included in the present study. For details on the ages covered by each provincial/territorial child welfare statute, see Table 1-2 in Trocmé et al. (2005). Québec participated in the study, but the data could not be included in most analyses because of limitations with the data collected through their client information system. The problem has been corrected in the 2008 wave of the study.

in the study; screened reports and reports on already open cases were excluded. The study only tracked case activity that occurred during the 1- to 2-month investigation period. To avoid double counting children, subsequent reports were removed if children were reported more than once during the sampling period. Therefore the unit of analysis for unweighted cases is the child. However, the weighted estimates (see Weighting Procedure) reflect an unknown proportion of duplicate reports that were included in the sites' annual case volume statistics. Therefore the unit of analysis of the study for the weighted estimates is the child maltreatment investigation.

Maltreatment Definitions

Each investigation was broadly classified into one of the following categories based on the form of maltreatment that best characterized the investigation (primary category): (a) physical maltreatment, (b) emotional maltreatment, (c) sexual maltreatment, (d) neglect, or (e) exposure to domestic violence. To overcome the variations in definitions of maltreatment used by different provinces and territories, the CIS-2003 used a common classification system across all jurisdictions that included 25 specific forms of maltreatment. Physical maltreatment was classified according to five subcategories: (a) shaking, pushing, grabbing, or throwing (30.1% of physical maltreatment investigations); (b) hitting with a hand (52.7% of physical maltreatment investigations); (c) punching, kicking, or biting (10.0% of physical maltreatment investigations); (d) hitting with an object (21.2% of physical maltreatment investigations); or (e) other physical abuse (19.3% of physical maltreatment investigations).[4] For detailed definitions of the primary maltreatment categories and their subcategories, see Trocmé et al. (2005).

All CIS-2003 maltreatment definitions use a *harm* or *substantial risk of harm* standard that includes situations where children have been harmed, as well as situations where children have not yet been harmed but are considered to have been at substantial risk of harm. The inclusion of substantial risk of harm reflects the clinical and legislative definitions used in most Canadian jurisdictions. The notion of harm extends beyond physical injury to include emotional harm. Workers assess each case holistically, considering both the physical and psychological well-being of the child and the level of risk present to determine whether the child is in need of protection. There had been no operational definition of maltreatment in federal law or provincial/territorial statutes prior to the constitutional challenge to Section 43. The CIS-2003 data were collected prior to the release of the Supreme Court decision and therefore prior to the establishment of set criteria for defining maltreatment.

[4] Percentages sum to more than 100 because more than one form of physical maltreatment could be present in a single investigation. These figures pertain to cases in which physical maltreatment was the primary or secondary form of physical maltreatment alleged.

Substantiation Definitions

A case was considered substantiated if the balance of evidence indicated that maltreatment had occurred. If there was not enough evidence to substantiate maltreatment but there remained a suspicion that maltreatment had occurred, a case was classified as suspected. A case was classified as unsubstantiated if the balance of evidence indicated that maltreatment had not occurred.

Weighting Procedure

Annual national estimates were derived by weighting cases up to the annual volume of cases investigated in each study site and applying a further regionalization weight reflecting the relative size of the child population in the selected jurisdiction to the population size in its stratum. Estimates were calculated by applying annualization and regionalization weights that reflected the sampling strategy used (see Trocmé et al. [2005] for details of weighting procedures). Table 1 provides the weighted frequencies of substantiated maltreatment investigations by maltreatment type for the total CIS sample (Trocmé et al.).

Selection of Cases for the Present Analysis

For Test 1, we selected those cases that provided sufficient evidence that physical maltreatment had occurred for the worker to substantiate the report. Therefore we included only (a) those cases for which physical maltreatment was the primary form investigated and (b) those cases that were substantiated following the investigation. We excluded (a) those for which the primary maltreatment form was sexual abuse, emotional abuse, neglect,

TABLE 1 Estimated Substantiated Child Maltreatment Investigations by Primary Category of Maltreatment in Canada in 2003, Excluding Quebec[a]

	Primary category of maltreatment					
	Physical abuse	Sexual abuse	Neglect	Emotional maltreatment	Exposure to domestic violence	Total
Estimate	25,257	2,935	30,366	15,569	29,370	103,298[b]
Percent of total sample	24	3	34	14	26	100
Incidence per 1,000 children	5.31	0.62	6.38	3.23	6.17	21.71

[a]Trocmé et al., 2005.

[b]Based on a sample of 5,660 unweighted substantiated child maltreatment investigations.

or exposure to domestic violence, and (b) those that were unsubstantiated or remained suspected but unsubstantiated following the investigation.

For Test 2, we selected all substantiated and unsubstantiated reports for which physical maltreatment was the primary form investigated. We excluded (a) those for which the primary maltreatment form was sexual abuse, emotional abuse, neglect, or exposure to domestic violence; and (b) those that were unsubstantiated but remained suspected following the investigation.

Sample Size

The sample selected for Test 1 comprised 1,286 substantiated child physical maltreatment investigations. The final weighted sample for this analysis consisted of 25,257 cases. The sample selected for Test 2 comprised 1,279 substantiated child physical maltreatment investigations and 1,173 unsubstantiated child physical maltreatment investigations. The final weighted sample for this analysis comprised 48,338 cases. All analyses were based on the weighted samples to provide nationally representative statistics. The analytic procedures were adjusted to ensure that weights did not inflate significance estimates.

Operationalization of the Supreme Court's Definition of Reasonable Force

The seven criteria used by the Supreme Court to define *reasonable* force were operationalized in the following way.

Administered by a parent

Workers recorded the relationship of the perpetrator to the child as biological parent, common-law partner, foster parent, adoptive parent, stepparent, grandparent, or other. For the purpose of applying the court's criterion, these categories were then collapsed into *parent* (biological, foster, adoptive, step) and *nonparent* (common-law partner, grandparent, other).

Child is age 2 to 12 years

Workers recorded children's ages in years. For the purpose of applying the court's criterion, children's ages were collapsed into three categories: (a) 0 to 1 years, (b) 2 to 12 years, and (c) 13 to 15 years.

Child is capable of learning from correction

The court did not elaborate on how a child's ability to learn from correction should be determined. We based our measurement of this criterion on the

assumption that a child's capacity to learn from correction might be limited by cognitive impairment, neurological disorder, mental illness, or disorders caused by maternal consumption of alcohol or drugs before birth. In the CIS-2003, workers recorded whether a number of child functioning problems were evident, indicating whether they were confirmed, suspected, absent, or unknown. We excluded suspected and unknown cases due to their unreliability. We operationalized *unimpaired* ability to learn from correction as the absence of developmental delay, learning disability, substance abuse-related birth defects, or positive toxicology at birth. We operationalized *impaired* ability to learn from correction as the confirmed presence of developmental delay, learning disability, substance abuse-related birth defects, or positive toxicology at birth.

Minor corrective force of a transitory and trifling nature

The Supreme Court justices did not provide definitions of *minor* or *transitory and trifling*. We based our definition on the assumption that such terms refer to force that does not result in physical injury or demonstrable emotional harm. In the CIS-2003, workers recorded (a) whether physical harm was sustained and, if so, what form of injury was present (bruises/cuts/scrapes, burns/scalds, broken bones, head trauma, other health condition, or death), whether medical treatment was required, and whether the child's health or safety was seriously endangered by the maltreatment; (b) whether emotional harm was probable despite the absence of current signs; (c) whether the child showed signs of mental or emotional harm; and (d) whether the child required therapeutic treatment for emotional harm.

We operationalized *minor force* as that which did not result in any form of physical injury or signs of emotional harm, or require therapeutic treatment. We operationalized *nonminor force* as that which resulted in at least one of the following: (a) any form of physical injury, (b) signs of emotional harm, or (c) a need for therapeutic treatment.

Does not involve the use of objects or blows or slaps to the head

Workers did not record whether or not the child's head was struck. However, they did record whether the child was hit with the hand, shaken/pushed/grabbed/thrown, punched/kicked/bitten, or hit with an object. We operationalized *no object used* as any act other than hitting with an object. We operationalized *object used* as hitting with an object. We recognize, however, that these categories confound the use of an object with the degree of force applied. Therefore we constructed a second measure that took both dimensions into account. Its categories were (a) hitting with the hand, (b) use of other force without an object

(shaking/pushing/grabbing/throwing or punching/kicking/biting), and (c) hitting with an object.

Is corrective

Workers recorded whether the maltreatment was a form of punishment. *Corrective force* was operationalized as that which was a form of punishment. *Noncorrective force* was operationalized as that which was not a form of punishment. This variable was recorded in 96.6% of cases; the remainder were omitted from the analysis.

Is not degrading, inhuman, or harmful

The Supreme Court justices did not identify those forms of physical punishment that they would consider to be degrading, inhuman, or harmful. The CIS-2003 did not ask workers to assess the degree of degradation experienced by the child or the extent of inhumanity displayed in the act. Harmfulness was measured by evidence of physical or emotional harm, but this measure was captured by our operationalization of the *minor force* criterion. Therefore we were unable to devise a measure of this criterion that did not overlap with other measures. As a result, we omitted it from our analyses.

Operationalization of the Use of Spanking as a Disciplinary Method Within the Family

Workers recorded whether the child's caregivers typically used spanking as a form of discipline. On the basis of this item, we scored cases as *spanking typical* or *spanking not typical*. This variable was recorded in 91.3% of cases; the remainder were omitted from the analysis.

Analysis

Test 1

First, we examined the proportion of cases in which *each* of the court's criteria defining unreasonable force was present: (a) the perpetrator was not the victim's parent, (b) the victim was younger than 2 or older than 12 years, (c) the victim's ability to learn from correction was impaired, (d) more than minor force was used, (e) objects were used, or (f) the perpetrator's intent was not corrective. Second, we examined the proportion of cases in which *at least one* of the court's criteria was present. Third, we examined the proportion of cases in which *all* of the court's criteria were present. Then, we compared each of these proportions to the proportion of cases in which spanking was typical.

Test 2

First, we conducted simple logistic regression analyses to examine the power of each predictor to significantly increase the odds of substantiation. If each of the court's criteria for defining excessive force increased the odds of substantiation more than the use of spanking, the limitation position would be supported. If the use of spanking increased the odds of substantiation more than any of the court's criteria for defining excessive force, the abolition position would be supported.

Next, we conducted a stepwise multiple logistic regression analysis to identify the combination of variables that best predicted substantiation. If the court's criteria accounted for more variance in substantiation decisions than use of spanking, the limitation position would be supported. If the use of spanking accounted for more variance in substantiation decisions than the court's criteria, the abolition position would be supported.

RESULTS

Test 1

As Table 2 shows, fewer than 10% of substantiated cases of child physical maltreatment involved nonparental perpetrators; approximately one-third involved victims younger than 2 or older than 12 years; few involved children whose ability to learn from correction was impaired; less than half involved the use of nonminor force; most did not involve the use of objects; and one-quarter involved noncorrective intent. Therefore the majority of substantiated cases of child physical maltreatment actually met *each* of the court's reasonable force criteria. Because parental perpetrators accounted for such a large majority of cases, we excluded this criterion from our examinations of the proportions of cases that exceeded any or all of the court's limits. Those examinations revealed that 23.8% of cases did not exceed *any* of the court's limits and only 0.1% of cases exceeded *all* of them.

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 greater than the proportion characterized by *all* of the court's criteria. The proportion of cases that exceeded *any* of the court's limits (76.27%) was greater than that characterized by spanking (54.6%), but almost one-quarter of substantiated cases of child physical maltreatment were not characterized by any of the court's criteria.

TABLE 2 Proportions of Substantiated Child Physical Maltreatment Investigations in Which Each Characteristic of Abusive Force was Present

Characteristic of abusive force	Percent of sample
Nonparental perpetrator	9.3
Grandparent	1.9
Other	7.4
Victim is younger than 2 years	2.8
Less than 1 year	1.6
1 year	1.2
Victim is older than 12 years	28.3
13 years	9.8
14 years	10.1
15 years	8.4
Victim's ability to learn from correction is impaired[a]	12.7
Confirmed developmental delay	6.5
Confirmed learning disability	10.2
Confirmed substance abuse-related birth defects	0.4
Confirmed positive toxicology at birth	0.2
Use of nonminor force[b]	46.3
Physical injury	29.3
Bruises/cuts/scrapes	26.3
Burns/scalds	0.2
Broken bones	0.6
Head trauma	1.0
Other health condition	2.4
Death	0.0
Signs of emotional harm currently present	19.6
Need for therapeutic treatment	19.0
Object used	18.8
Act was not intended as punishment	23.2
Spanking typically used as a form of discipline	54.6

[a]Some children may have more than one of the four conditions.
[b]Defined as acts resulting in at least one of the following: any form of physical injury, signs of emotional harm, or a need for therapeutic treatment. Some children might have had more than one of these outcomes.

Test 2

We first examined the power of *each* variable to increase the odds of substantiation in a series of simple logistic regression equations (see Table 3). Then we conducted a forward stepwise multiple logistic regression analysis to identify the combination of variables that best predicted substantiation.

Force was administered by a nonparent

The odds of substantiation were unrelated to whether the perpetrator was a parent. Of those cases involving a nonparent, 38.9% were substantiated, compared to 41.3% of cases involving a parent, $\chi^2(2, N = 2{,}993) = 1.971$, $p = .373$.

TABLE 3 Results of Simple Regression Analyses Predicting Substantiation of Child Physical Maltreatment

Predictor	*B*	*SE*	Wald	*df*	*P*	exp(*B*)
Perpetrator (contrast: parent)	−0.03	0.16	0.05	1	0.828	0.97
Child age (contrast: 2 to 12 years, inclusive)			67.03	2	0.004	
Under 2 years	−1.09	0.38	21.13	1	0.002	0.34
Over 12 years	0.48	0.15	37.85	1	0.005	1.61
Impaired ability to learn from correction (contrast: unimpaired ability to learn from correction)	−0.05	0.18	5.77	1	0.789	1.05
Use of nonminor force (contrast: minor force)	1.84	0.16	261.95	1	0.000	6.29
Type of force (contrast: hit with hand)			12.16	2	0.000	
Hit with object	−0.19	0.12	9.73	1	0.122	0.83
Other force	0.26	0.13	0.30	1	0.056	1.30
Spanking typical (contrast: spanking not typical)	1.15	0.27	159.54	1	0.000	3.14

Child was under 2 or over 12 years

Cases involving children under 2 years were less likely to be substantiated than those involving children age 2 to 12 years. However, cases involving children over 12 years were 1.6 times more likely to be substantiated as those involving children age 2 to 12 years. Of cases involving children age 2 to 12 years, 39.6% were substantiated, while 19.8% of cases involving children under 2 years and 50.8% of those involving children over 12 years were substantiated, $\chi^2(4, N = 2{,}993) = 79.86$, $p < .001$.

Child's ability to learn from correction was impaired

The child's ability to learn from correction did not affect the odds of substantiation. Of cases involving children whose ability to learn from correction was impaired, 43.5% were substantiated, compared to 40.8% of cases involving children whose ability to learn from correction was not impaired, $\chi^2(2, N = 2{,}993) = 4.22$, $p = .121$.

Use of nonminor force

Cases in which nonminor force was used were 6.29 times as likely to be substantiated as those in which minor force was used. Of the cases involving nonminor force, 67.3% were substantiated, compared with 30.7% of cases involving minor force, $\chi^2(2, N = 2{,}993) = 417.83$, $p < .001$.

Use of objects

Of the cases involving the use of objects, 48.3% were substantiated, compared with 42.7% of those involving hitting with the hand and 36.8% of those

involving other force without an object, $\chi^2(4, N = 2{,}993) = 28.86$, $p < .001$. However, the use of objects did not affect the odds of substantiation in the regression analysis.

Force was noncorrective

This variable could not be included in this analysis because the item was not completed by workers in the case of unsubstantiated investigations.

Spanking typical

Cases involving families who typically used spanking as a form of discipline were 3.14 times as likely to be substantiated as those who did not typically use spanking as a form of discipline. Of the cases in which spanking was typical, 56.6% were substantiated, compared to 32.7% of cases in which spanking was not typical, $\chi^2(2, N = 2{,}993) = 198.07$, $p < .001$.

Stepwise logistic regression

We omitted *nonparental perpetrator* from the stepwise analysis because it accounted for such a large proportion of the cases. As Table 4 shows, the best predictor of substantiation was the use of nonminor force. Cases in which nonminor force was used (physical harm sustained, emotional harm sustained, or therapeutic treatment required) were more than five times as likely to be substantiated as those in which minor force was used (no physical harm, no emotional harm, therapeutic treatment not required). The use of nonminor force accounted for 16% of the variance in substantiation decisions.

The second best predictor of substantiation was the use of spanking as a typical method of discipline within the family. Cases in which spanking was typical were more than three times as likely to be substantiated as those in which spanking was not typical. Spanking accounted for an additional 8% of the variance in substantiation decisions. Together, the use of nonminor force and the use of spanking as a disciplinary method accounted for 24% of the variance in substantiation decisions.

The third best predictor of substantiation was the child's age. Cases involving children younger than 2 years were less likely to be substantiated than those involving children age 2 to 12 years. On the other hand, those cases involving children older than 12 years were more likely to be substantiated than those involving children age 2 to 12 years. Child age accounted for an additional 3% of the variance in substantiation decisions.

TABLE 4 Results of Forward Stepwise Multiple Regression Analyses Predicting Substantiation of Child Physical Maltreatment

Step	Variables entering model	*B*	*SE*	Wald	*df*	*P*	exp(*B*)
1	Use of nonminor force[a]	1.689	0.103	267.481	1	0.000	5.413
2	Spanking typical[b]	1.192	0.093	165.707	1	0.000	3.292
	Use of nonminor force[a]	1.734	0.107	260.862	1	0.000	5.666
3	Child age[c]						
	Under 2 years	−1.002	0.225	19.748	1	0.000	0.367
	Over 12 years	0.658	0.113	33.657	1	0.000	1.931
	Spanking typical[b]	1.295	0.097	179.445	1	0.000	3.652
	Use of nonminor force[a]	1.685	0.110	236.460	1	0.000	5.391
4	Child age[c]						
	Under 2 years	−0.970	0.226	18.487	1	0.000	0.379
	Over 12 years	0.673	0.114	34.955	1	0.000	1.961
	Spanking typical[b]	1.211	0.099	148.352	1	0.000	3.357
	Use of nonminor force[a]	1.753	0.113	242.686	1	0.000	5.772
5	Type of force[d]						
	Hit with object	0.072	0.135	0.284	1	0.594	1.074
	Other force	−0.331	0.105	9.977	1	0.002	0.718
6	Child age[c]						
	Under 2 years	−1.006	0.226	19.734	1	0.000	−.366
	Over 12 years	0.677	0.114	35.277	1	0.000	1.969
	Impaired ability to learn from correction[e]	−0.332	0.143	5.379	1	0.020	0.717
	Spanking typical[b]	1.215	0.100	149.076	1	0.000	3.371
	Use of nonminor force[a]	1.766	0.113	244.475	1	0.000	5.846
	Type of force[d]						
	Hit with object	0.072	0.135	0.286	1	0.593	1.075
	Other force	−0.316	0.105	9.019	1	0.003	0.729

[a]Contrast category: Use of minor force.
[b]Contrast category: Spanking not typical.
[c]Contrast category: age 2 to 12 years, inclusive.
[d]Contrast category: Hit with hand.
[e]Contrast category: Unimpaired ability to learn from correction.

The fourth best predictor of substantiation was the type of force used. While cases in which children were hit with a hand were as likely to be substantiated as those in which children were hit with an object, they were more likely to be substantiated than those involving types of force other than hitting with hands or objects. The type of force accounted for 5% of additional variance in substantiation decisions.

The child's ability to learn from correction was the last variable to enter the model. Cases involving children whose ability to learn from correction was impaired (developmental delay, learning disability, substance abuse-related birth defects, or positive toxicology at birth) were less likely to be substantiated than those involving children whose ability to learn from correction was not impaired. This variable accounted for an additional 3% of the variance in substantiation decisions.

DISCUSSION

The purpose of this study was to evaluate the validity of the two major positions taken in the debate over law reform regarding physical punishment. The limitation position holds that benign physical punishment can be distinguished from maltreatment, that this distinction can be written into law, and that placing legal limits on the use of physical punishment will adequately protect children from maltreatment. On the other hand, the abolition position holds that attempts to distinguish harmless from harmful physical punishment create a false dichotomy, perpetuate the idea that physical punishment is justified, and fail to protect children from maltreatment. According to this position, physical punishment per se should be abolished on the basis of human rights principles, as well as research demonstrating the inherent tendency of physical punishment to escalate to increasingly severe levels (Vasta, 1982). Our findings provided stronger support for the abolition position than for the limitation position.

Evidence Relevant to the Limitation Position

Of all cases of child physical maltreatment substantiated in Canada in 2003, 1 in 5 did not exceed *any* of the Supreme Court's limits on reasonable force, and only 1 in 1000 exceeded *all* of them.[5] In fact, *each* of the court's criteria defining reasonable force actually characterized the majority of cases of substantiated child physical maltreatment.

Limit 1: the force must be carried out by parents

Most (90.6%) substantiated incidents of child physical maltreatment were carried out by parents. Therefore the court's assumption that physical force administered by a parent constitutes a lesser risk than that administered by nonparents appears to be faulty. It is possible that physical maltreatment carried out by nonparental perpetrators is not easily detected or is less likely to be reported to child welfare agencies. However, it is also possible that the majority of these incidents are indeed carried out by parents. Of the 13 provincial/territorial jurisdictions in Canada, 12 prohibit physical punishment in child care settings, 10 prohibit it in schools,[6] and all prohibit it in penal institutions. These laws may have reduced the incidence of physical maltreatment by teachers, coaches, and child care providers to the extent that they now constitute only a very small minority of cases. Regardless, it cannot be assumed that all parents will act in the best interest of their children or

[5] Excluding non-parental perpetrator.

[6] In the remaining three jurisdictions, physical punishment is prohibited by policy in many, if not most, school divisions and is a very uncommon practice in the schools.

that limiting the use of corrective force to parents will provide adequate protection to children.

Limit 2: the force must be administered to a child between the ages of 2 and 12 years, inclusive

The majority of child physical maltreatment victims were in fact between the ages of 2 and 12 years. The victim was younger than 2 years in only 2.8% of cases, and older than 12 years in only 28.3% of cases. Reports involving children between 2 and 12 years were less likely to be substantiated than those involving children over 12 years, but they were more likely to be substantiated than those involving children under 2 years. Clearly, limiting the use of force to children age 2 to 12 years provides inadequate protection.

Limit 3: the child must be capable of learning from correction

This limit was difficult to operationalize, as the court did not explain what "capable of learning from correction" actually means. It is not clear whether this limit prohibits parents from physically punishing children with autism, attention deficits, central auditory processing deficits, sensory impairments, or other conditions that could interfere with their processing of information. Because we did not have data available on every condition that could affect children's learning, we examined the cases according to four broad diagnostic categories. Only 12.7% of victims of child physical maltreatment had any of these four conditions: (a) developmental delays (6.5%), (b) learning disabilities (10.2%), (c) substance abuse-related birth defects (0.4%), or (d) positive toxicology tests at birth (0.2%). According to this measure then, most children who are physically maltreated are capable of learning from correction. This measure had no power to predict whether a report of child physical maltreatment would be substantiated.

Limit 4: the force must be of a minor nature

The court did not define minor force other than as "transitory and trifling." We operationalized minor force as that which did not result in any form of physical injury or signs of emotional harm, or require therapeutic treatment. This criterion was the best predictor of whether a child physical maltreatment report would be substantiated. Cases in which nonminor force was used were more than six times as likely to be substantiated as those in which minor force was used.

However, even among substantiated cases, slightly more than half involved minor force. Therefore, although physical or emotional harm contributed

substantially to workers' substantiation decisions, many cases in which children had not sustained harm were substantiated. This finding may indicate that workers recognize the risk of harm inherent in the use of noninjurious force and that they will substantiate reports on this basis.

Limit 5: the force must not involve the use of objects

This limit assumes that striking a child with a hand is less harmful than striking a child with an object. In fact, only 18.8% of substantiated cases of child physical maltreatment involved the use of objects. The remaining 81.2% of cases were almost equally divided between those that involved hitting with the hand (42.5%) and those that involved the use of other types of force without objects (38.7%; shaking/pushing/grabbing/throwing or punching/kicking/biting). This criterion was not effective in predicting whether a report of child physical maltreatment would be substantiated. Clearly children are being harmed or placed at substantial risk of harm by force that does not involve the use of objects.

Limit 6: the force must be corrective

It appears that the court based this limit on the perceived dichotomy between well-intentioned force and force intended to harm the child. The present findings indicate, however, that most substantiated cases of child physical maltreatment involve incidents that were well intended. In 76.8% of cases, the act was intended to be corrective. We were unable to assess the power of this variable to predict substantiation, as this information was collected only for substantiated cases. But it is clear that well-intentioned use of force accounts for most cases of child physical maltreatment.

Evidence Relevant to the Abolition Position

The present findings 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 criteria set out by the Supreme Court of Canada. In more than half (54.6%) of cases, spanking was typically used as a form of discipline in the child's home. In contrast, none of the court's criteria for identifying unreasonable force were present in a majority of cases, and cases in which *all* of the court's criteria were met were virtually nonexistent. It was more likely that substantiated cases met *at least one* of the court's unreasonable force criteria than that they involved spanking as a form of discipline. However, almost one-quarter of substantiated cases of child physical maltreatment were not characterized by *any* of the court's criteria defining unreasonable force. If the court's limits are valid

indicators of maltreatment, all substantiated cases should exceed at least one. The present findings suggest that a substantial proportion of incidents of child physical maltreatment are not being captured by the court's attempt to operationally define reasonable force.

The use of spanking was a significant predictor of whether a report would be substantiated. Cases in which spanking was typical were 3.14 times as likely to be substantiated as those in which spanking was not typical. Spanking was the second most powerful predictor of substantiation after use of nonminor force. Together these two variables accounted for 24% of the variance in substantiation decisions. The child's age, the use of objects, and the child's ability to learn from correction each accounted for no more than 5% of the variance in substantiation.

Limitations of the Present Study

A particular strength of this study was the use of a sample of child physical maltreatment reports that was both nationally representative and collected at the time when the Supreme Court of Canada was considering its decision regarding Section 43 of the *Criminal Code* (1985) but had not yet released its decision. This sample allowed us to assess the validity of the court's definition of unreasonable force by mapping its limits onto a large sample of well-documented current cases.

However, some limitations of the study should be kept in mind. First, the CIS-2003 database comprises those cases that were detected, reported, and investigated. We do not know the characteristics of those cases of child physical maltreatment that did not come to the attention of the child welfare system. Second, because the CIS-2003 documents only reported cases, the age distribution might be skewed. It is more difficult to detect physical maltreatment of young children than of older children. Therefore our knowledge of the characteristics of cases involving young children is limited. Third, several of the court's limits were vague. For example, *minor force* was not defined, nor was *degrading, inhuman, or harmful* force. We were able to operationalize the former, but not the latter. We cannot be certain that our definition of minor force is consistent with the court's definition. Fourth, because nonparental perpetrators may be more likely to be referred to the criminal justice system than to the child welfare system, the CIS-2003 may not provide a full test of the court's first criterion.

CONCLUSION

Following the Supreme Court's ruling, the government of Canada, in its response to the United Nations' questionnaire on violence against children (Canada's Response, 2004), stated that "it continues to support the use of

criminal sanctions in all situations that raise the potential for harm to a child" (p. 6). The findings of this study indicate otherwise. They suggest that the Supreme Court of Canada's attempt to define unreasonable use of force was arbitrary and not grounded in the reality of child physical maltreatment. Most maltreated children are maltreated by their parents, are between the ages of 2 and 12 years, are capable of learning from correction, and are not struck with objects. Furthermore, three-quarters of child maltreatment incidents take place within a corrective context. In fact, one in five cases of substantiated physical maltreatment cases in Canada are not characterized by *any* of the court's criteria for defining unreasonable force. On the other hand, about half of maltreated children experience spanking as a typical form of discipline in their homes. Together these findings suggest that ending all physical punishment is more likely to reduce physical maltreatment than placing arbitrary limits on its use.

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