

Guide to explain the law on:

Corporal Punishment

Physical discipline (hitting and spanking) of children



Is it illegal to hit someone else?

Yes, it is an assault under the *Criminal Code of Canada* to use force on another person without that person's permission. Hitting another person is an assault no matter how hard or soft you hit. However, there are some exceptions; for example, if someone pushed you away from danger or if you used reasonable force to defend yourself against an attacker.

Using physical force on children is another exception:

Section 43 of the *Criminal Code of Canada* allows the use of some physical force if the purpose is for disciplining a child under the age of 18. Only parents or people who are in the place of a parent (for example, a step-parent) can be excused if they use reasonable force on a child for discipline.

The Supreme Court of Canada studied this law in 2004; the citation for the case is: *Canadian Foundation for Children, Youth and the Law v. Canada*, [2004] 1 SCR 76.

At the time that we, Justice for Children and Youth, brought this case to the courts, the legal clinic was operating under our incorporated name: Canadian Foundation for Children, Youth and the Law.

This handout explains the rules that the Supreme Court of Canada made on when and what is legal when disciplining a child; this is the current law in Canada.

Can teachers hit me?

No, teachers can only use reasonable force to restrain or guide a student. Teachers must only use the necessary force required to remove a student from the classroom or to make a student obey instructions. They cannot use physical punishment to discipline or correct behaviour.

Who is a person standing in the place of a parent?

A person who has taken on "all of the obligations of parenthood" for a child is considered to be

standing in the place of a parent; i.e. a legal guardian. Babysitters, nannies and, in many cases, even step-parents, do not fall within this category and are not allowed to hit children to discipline.

What is “reasonable force”?

The law allows for corrective force that is “transitory and trifling”, which means minor corrective force or the mildest forms of assault. Parents or a person in the place of a parent can NOT:

- use force on a child under 2 years old or on a teenager,
- use force that causes harm or might cause bodily harm,
- use force because they are angry, frustrated, have lost their temper or because they have an “abusive personality”,
- use any object – like a belt or ruler or hairbrush,
- hit a child on the head,
- do anything degrading, inhumane or harmful (this might include taking clothes off or spanking in public), or
- use force on children who have disabilities which make it hard for them to learn.

The police must use this definition as a guide in deciding whether to charge a parent with assault. If a parent or person in the place of a parent does something that is on this list, that person can be charged with assault.

Does this mean spanking is legal?

Spanking means different things to different people. It can also have different effects on different children. Spanking is illegal if:

- it is done in a way that is degrading or harmful;
- there is potential for bodily harm; and
- it is done because the parent is angry and frustrated or lost his or her temper.

My parent hits me, what can I do?

- Speak to an adult you trust about what is happening;
- Call the police; and/or
- In Ontario, if you are under 18 and being physically injured or hurt in some other way, you can also call a child welfare agency (some of their numbers are at the end of this pamphlet) and a social worker will talk to you to see if you are being abused. If you are in danger, a worker will come to see you right away or help you contact someone such as the police.

If I tell someone I’m being abused, will they tell someone else?

- In Ontario, Nova Scotia, Newfoundland and Saskatchewan: if you tell a person things which make them suspect that you are being abused and you are under 16, they must report this to a child welfare agency or the police.
- In Quebec, Alberta, Manitoba and Prince Edward Island: this must be reported if you are under 18.
- In British Columbia, New Brunswick, Yukon, Nunavut and Northwest Territories: the age limit is 19.

Will these rules ever change?

Maybe. Canada has been told by the United Nations Committee on the Rights of the Child to stop allowing parents and teachers to use physical force on children for discipline. More and more scientific research is showing that physical punishment is harmful to children.

The UN Committee wants to end the use of physical punishment on children around the world and is asking governments to change their laws if they allow it. Some countries have banned all forms of physical and humiliating punishment. International laws and expert opinions can have an effect on what our courts think is reasonable.

In other words, what the Supreme Court stated was legal today might not be legal tomorrow because international laws are changing and research continues to show that physical discipline is harmful.

JFCY supports the end of the use of physical punishment on children.

For more information: www.repeal43.org and www.endcorporalpunishment.org

Kids Help Phone 1-800-668-6868

www.kidshelpphone.ca

24/7 free and confidential counselling by phone, online and texting, for children and youth up to 20 years of age.

Toronto Resources:

- Toronto Police Service: 416-808-2222 (911 for emergencies) – www.tps.ca
- Toronto Children's Aid Society: 416-924-4646, www.torontocas.ca
- Catholic Children's Aid Society of Toronto: 416-395-1500, www.torontoccas.org
- Jewish Family & Child Services of Toronto: 416-638-7800, www.jfandcs.com
- Native Child & Family Services: 416-969-8510, www.nativechild.org

Ontario Association of Children's Aid Societies: www.oacas.org

Parenting Resources:

- Invest in Kids – parenting information, www.investinkids.ca
- Positive Discipline – parenting information, www.positivediscipline.com
- City of Toronto Healthy Parenting Resources, <https://www.toronto.ca/community-people/children-parenting/pregnancy-and-parenting/parenting/>

This handout gives general information about the law on physical punishment in Canada. Speak to a lawyer about specific questions. December 2022.

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